



**Zoning Administrator**  
**Town of Berlin, Vermont**  
**108 Shed Road**  
**Berlin, Vermont 05602**  
**Phone: 802-229-2529**  
**Fax: 802-223-4404**  
**E-mail: [zoning@berlinvt.org](mailto:zoning@berlinvt.org)**

**PLANNING COMMISSION REPORT AND PUBLIC NOTICE**  
**PROPOSED ZONING BYLAW AMENDMENTS, April 22, 2013**

Pursuant to 24 V.S.A. Chapter 117 § 4441, the Berlin Planning Commission presents the following report and public notice regarding proposed amendments to the Town of Berlin's Zoning Bylaws. A copy of the regulations are available in the Town Clerk's Office.

The purpose of the proposed Berlin Zoning Bylaw amendments is to complete an update of the bylaws to meet or exceed the standards needed to participate in the National Flood Insurance Program. The proposed bylaw amendments incorporate portions of the Department of Environment Conservation (DEC)'s Vermont Model Inundation Hazard Regulations #5. DEC has deemed the proposed bylaw amendments as being compliant with the National Flood Insurance Program requirements. In addition, the proposed amendments include changes to the sign section of the bylaws.

The Planning Commission will hold a public hearing on the proposed amendments on May 8, 2013 at 7:00 PM at the Berlin Municipal Office. After which, the Planning Commission will forward the amendments (including any changes) to the Select Board for a public hearing.



## **Town of Berlin, Vermont Zoning Regulations**

March 6, 1973  
Revised August 1980  
Revised March 1985  
Revised March 1987  
Revised March 1988  
Revised March 1989  
Revised March 1989  
Revised March 1998  
Revised March 2002  
Revised October 2003  
Revised June 2005  
Revised March 2012  
Proposed April 22, 2013

**Town of Berlin Zoning Regulations**  
**Table of Contents**

Article I. Authority & Purpose .....	4
Section 1.01    ENACTMENT .....	4
Section 1.02    PURPOSE .....	4
Section 1.03    APPLICATION & INTERPRETATION OF REGULATIONS .....	4
Section 1.04    AMENDMENTS .....	4
Section 1.05    SEPARABILITY .....	4
Section 1.06    EFFECTIVE DATE .....	4
Section 1.07    MUNICIPAL ADMINISTRATIVE PROCEDURES .....	5
Section 1.08    FEE SCHEDULE .....	5
Article II. Establishment of Zoning Districts .....	6
Section 2.01    ESTABLISHMENT OF ZONING DISTRICTS .....	6
Section 2.02    ZONING MAP AND INTERPRETATION OF BOUNDARIES .....	6
Section 2.03    APPLICATION OF DISTRICT STANDARDS .....	7
Section 2.04    DISTRICT OBJECTIVES, USES & STANDARDS .....	7
Table 2.01    HIGHLAND CONSERVATION (AR) DISTRICT .....	8
Table 2.02    RESIDENTIAL 80,000 (R-80) .....	9
Table 2.03    RURAL RESIDENTIAL (R-40) DISTRICT .....	10
Table 2.04    MODIFIED RESIDENTIAL (MR) DISTRICT .....	11
Table 2.05    MEDIUM DENSITY RESIDENTIAL (R-20) DISTRICT .....	12
Table 2.06    COMMERCIAL (CG) DISTRICT .....	13
Table 2.07    HIGHWAY COMMERCIAL DISTRICT (HC) .....	15
Table 2.08    LIGHT INDUSTRIAL (LN) DISTRICT .....	17
Table 2.09    INDUSTRIAL (IN) DISTRICT .....	19
Table 2.10    TOWN CENTER (TC) DISTRICT .....	21
Article III. General Regulations .....	23
Section 3.01    ABANDONMENT OF STRUCTURES .....	23
Section 3.02    ACCESS, DRIVEWAYS & FRONTAGE REQUIREMENTS .....	23
Section 3.03    CONVERSIONS & CHANGES IN USE .....	25
Section 3.04    EQUAL TREATMENT OF HOUSING .....	26
Section 3.05    EXISTING SMALL LOTS .....	26
Section 3.06    HEIGHT REQUIREMENTS .....	27
Section 3.07    FILL .....	27
Section 3.08    LANDSCAPING REQUIREMENTS .....	28
Section 3.09    LOT & YARD REQUIREMENTS .....	28
Section 3.10    MISCELLANEOUS STATUTORY REQUIREMENTS .....	28

Section 3.11	NON-CONFORMING USES & STRUCTURES.....	29
Section 3.12	OFF-STREET PARKING & LOADING SPACE REQUIREMENTS .....	30
Section 3.13	SIGNS .....	31
Table 3.01	Exempted Signs.....	32
Table 3.02	Free Standing Sign Requirements .....	33
Section 3.14	STREAM PROTECTION .....	34
Section 3.15	TEMPORARY USES & STRUCTURES.....	35
Section 3.16	WALLS & FENCES .....	35
Section 3.17	OUTDOOR LIGHTING .....	35
Article IV.	Specific Use Provisions .....	37
Section 4.01	ADAPTIVE RE-USE OF HISTORIC BARNs.....	37
Section 4.02	CAMPERS, TEMPORARY SHELTERS, & STORAGE OF MOTOR VEHICLES .....	37
Section 4.03	EXTRACTION OF EARTH RESOURCES.....	38
Section 4.04	HOME OCCUPATIONS, HOME CHILD CARE & COTTAGE INDUSTRIES	39
Section 4.05	MOBILE HOMES.....	41
Section 4.06	MOBILE HOME PARKS .....	41
Section 4.07	SWIMMING POOLS & PONDS.....	42
Section 4.08	WIRELESS TELECOMMUNICATIONS FACILITIES .....	42
Section 4.09	TELEVISION/TELECOMMUNICATION SATELLITE ANTENNA STRUCTURES ("DISHES") .....	53
Section 4.10	PLANNED UNIT DEVELOPMENT (PUD).....	53
Article V.	Development Review Process .....	56
Section 5.01	EXEMPTIONS TO THE REQUIREMENT FOR A PERMIT - PERMITS NOT REQUIRED.....	56
Section 5.02	ZONING ADMINISTRATOR AUTHORITY .....	56
Section 5.03	APPLICATIONS.....	58
Section 5.04	NOTICE OF HEARINGS .....	58
Section 5.05	SITE PLAN REVIEW - PERMITTED USES .....	59
Section 5.06	CONDITIONAL USE REVIEW .....	61
Section 5.07	VARIANCE CRITERIA REVIEW .....	64
Section 5.08	WAIVERS.....	65
Section 5.09	FLOOD HAZARD REGULATIONS .....	65
Section 5.10	ISSUANCE OR DENIAL OF A ZONING PERMIT .....	71
Article VI.	Administration & Enforcement.....	71
Section 6.01	RECORDING REQUIREMENTS.....	71
Section 6.02	EXPIRATION OF PERMIT .....	72
Section 6.03	EXTENSION OF PERMIT .....	72



Section 6.04 APPEAL OF DECISION .....	72
Section 6.05 CERTIFICATE OF OCCUPANCY .....	73
Section 6.06 VIOLATIONS.....	73
Section 6.07 ENFORCEMENT LIMITATIONS.....	74
Article VII. Definitions .....	74
Section 7.01 INTERPRETATION .....	74
Section 7.02 DEFINITIONS .....	74

## **Article I. Authority & Purpose**

### **Section 1.01 ENACTMENT**

In accordance with the Vermont Planning and Development Act, hereinafter referred to as the "Act," 24 VSA, Chapter 117, there are hereby established Zoning Regulations for the Town of Berlin, Vermont, which are set forth in the text and map that constitute these Regulations. These Regulations shall be known as the "Town of Berlin Zoning Regulations."

### **Section 1.02 PURPOSE**

It is the intent of these Regulations to provide for orderly community growth, to implement the goals and objectives of the Berlin Town Plan, and to further the purposes established in the Act.

### **Section 1.03 APPLICATION & INTERPRETATION OF REGULATIONS**

- (A) The application of these Regulations is subject to the provisions of all subchapters of the Act as most recently amended.
- (B) Except as hereinafter provided, no building or structure shall be erected, moved, altered or extended, and no land, building, or structure or part thereof, shall be occupied or used unless in conformity with the Regulations herein specified for the district in which it is located. Any use deemed by the DRB as not of similar general character as an existing permitted or conditional use will be prohibited.
- (C) The adoption of these regulations shall not repeal or limit any permit previously issued. Where, for the purposes of a permit application, these Regulations impose a greater restriction upon use of a structure or land than is required by any other statute, ordinance, rule, regulation, permit, easement, or agreement, then these regulations shall control.

### **Section 1.04 AMENDMENTS**

These Regulations may be amended according to the requirements and procedures established in the Act.

### **Section 1.05 SEPARABILITY**

The invalidity of any provision of these Regulations shall not invalidate any other part.

### **Section 1.06 EFFECTIVE DATE**

- (A) These Regulations shall take effect on the date of their adoption by the Town of Berlin, in accordance with the Act.
- (B) The zoning regulations and zoning map for the Town of Berlin in effect prior to the adoption of these regulations and map are hereby repealed as of the effective date of these regulations and map.

## **Section 1.07      MUNICIPAL ADMINISTRATIVE PROCEDURES**

**Appointments.** The following appointments shall be made in association with the administration and enforcement of these regulations as provided for in the Act:

- (A)      **Zoning Administrator.** The Select Board, shall appoint a Zoning Administrator for a term to be consistent with the Berlin Town Charter. In the absence of the Zoning Administrator, an Acting Zoning Administrator may be appointed by the Select Board. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect developments, maintain records, and perform other associated tasks as is necessary and appropriate.
- (B)      **Development Review Board.** Development Review Board members and alternates shall be appointed by the Select Board for specified terms in accordance with the Act. The Board shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act, Vermont's Open Meeting Law [1 V.S.A., §310-314]; and shall have all powers and duties as set forth in the Act to administer the provisions of these regulations.
- (C)      **Planning Commission.** A Planning Commission shall be appointed by the Select Board in accordance with the Act. The Select Board shall determine the Board's members as well as their number and term of office. The Select Board may remove any member of the Planning Commission with a unanimous vote of the Board. The Planning Commission shall have all duties set forth by the Act not expressly granted to the Development Review Board.

**Section 1.08      FEE SCHEDULE..** The Select Board shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs.

## **Article II. Establishment of Zoning Districts**

### **Section 2.01 ESTABLISHMENT OF ZONING DISTRICTS**

The Town of Berlin is hereby divided into the following Zoning Districts as shown on the Town Zoning Map:

R-80	Residential 80,000
RR-40	Rural Residential
R-20	Residential 20, medium density residential
CG	General Commercial
HC	Highway Commercial
LN	Light Industrial
AR	Highland Conservation
MR	Modified Residential
IN	Industrial
TC	Town Center

### **Section 2.02 ZONING MAP AND INTERPRETATION OF BOUNDARIES**

- (A) The location and boundaries of Zoning Districts are established as shown on the Official Zoning Map, which is a part of these Regulations. The Flood Hazard boundaries are depicted on the most recent National Flood Insurance Program maps for the Town of Berlin, which are adopted by reference to be part of these regulations. The official zoning map and overlays shall be identified by the signatures of the Select Board, as attested to by the Town Clerk. No changes of any nature shall be made on the official map or overlays except in conformance with zoning amendment procedures and requirements set forth in the Act.
- (B) If uncertainty exists with respect to the boundary of any zoning district, the Development Review Board shall determine the location. If a parcel of land is located in more than one zoning district, the Development Review Board may permit, as a conditional use, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.
- (C) When the Zoning Administrator cannot definitely determine the location of a district boundary by the scale or dimensions given on the official zoning map and associated overlays or by the above rules, the Planning Commission and/or the appropriate state official (e.g., flood hazard administrator) shall be consulted prior to making the final determination. A determination by the Zoning Administrator regarding the location of a district boundary may be appealed to the Development Review Board under Section 6.4. If the location of a boundary is uncertain, then the following rules shall apply:
1. Boundaries indicated as approximately following the center lines of streams, roads, transportation and utility rights-of-way shall be construed to follow such center lines.
  2. Boundaries indicated as approximately following property boundaries or platted lot lines shall be construed to follow such lot lines.

3. Boundaries indicated as following lake or pond shorelines shall be construed as being parallel the normal mean lake level. In the event of change in the shoreline the boundary shall be construed as moving with the shoreline.
4. Boundaries indicated as following elevation contours shall be construed to follow such contours.
5. Boundaries indicated as parallel to or extensions of features under the subsections 1 - 4 shall be so construed. Boundaries indicated as lines perpendicular to lines or features described in subsections (1)-(3) shall be construed to proceed at right angles from such lines or features. Distances not specifically indicated shall be determined by the scale of the official zoning map.
6. The abandonment or relocation of a right-of-way or roadway, or the change in a line or feature which references a district boundary line, after the effective date of these regulations, shall not affect the location of such boundary line.
7. Where available the base flood elevations and floodway limits, provided by the National Flood Insurance Program (NFIP) in the Flood Insurance Study and accompanying maps shall be used to administer and enforce the flood hazard provisions of these regulations.

In areas where base flood elevations and floodway limits have not been provided by the NFIP, base flood elevations and floodway information available from state or federal agencies or other sources shall be obtained and reasonably used to administer and enforce flood hazard area overlay provisions.

### **Section 2.03 APPLICATION OF DISTRICT STANDARDS**

- (A) The standards for each district shall apply uniformly to each class of use and/or structure, unless otherwise specified in these regulations. All uses and structures must comply with all prescribed standards for the district in which they are located as set forth in Tables 2.01 -2.11 and as defined in Article II, unless otherwise permitted under Planned Residential Development (PRD) pursuant to Article IV. Non-conforming uses and non-complying structures shall be regulated in accordance with Section 3.11.
- (B) Overlay district standards shall be applied concurrently with the standards for underlying districts. Where overlay districts impose more restrictive standards on the use of a structure or land, the standards of the overlay district shall apply.
- (C) Allowed uses for each district are classified as “**permitted**,” to be reviewed in accordance with Section 5.05, or “**conditional**” to be reviewed in accordance with Section 5.06.
- (D) Any use not allowed in a district by these regulations, unless specifically exempted under Section 3.10, shall be deemed to be prohibited.

### **Section 2.04 DISTRICT OBJECTIVES, USES & STANDARDS**

The following tables set forth the stated purpose, allowable uses and specific standards for each zoning district.

**Table 2.01  
HIGHLAND CONSERVATION (AR) DISTRICT**

**A. Purpose.** To protect fragile natural resources, including wetlands and surface waters, steep slopes, wildlife habitat and upland areas; encourage the productive use of forest resources; promote traditional outdoor recreation uses, and allow low density residential development in a manner that is compatible with the other purposes of the district.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Camp
6. Home Child Care
7. Home occupation
8. One-family dwelling
9. Private outdoor recreation
10. Professional residence-office
11. Public outdoor recreation
12. Two-family dwelling
13. Wildlife refuge

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Adaptive re-use of historic barns
2. Bed & Breakfast
3. Commercial outdoor recreation
4. Dog Kennel
5. Licensed child care
6. Municipal building or facility
7. Private club
8. Public utility
9. Religious institution
10. School
11. Transmission lines

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	Five acres
Lot Frontage Minimum:	300 feet
Lot Depth Minimum:	300 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	75 feet
Side Yard Minimum:	25 feet each side
Building Coverage Maximum:	5 percent
Building Height Maximum:	35 feet
General Regulations:	As set forth in Article III herein



**Table 2.02**  
**RESIDENTIAL 80,000 (R-80) DISTRICT**

**A. Purpose.** To protect fragile natural resources, including wetlands, surface waters and wildlife habitat; promote continued agricultural activities; prevent strip development along major road corridors; and encourage moderate density residential development, including clustered housing, and limited commercial uses in appropriate locations.

**B. Permitted Uses.** In Residential 80,000 Districts R. 80, the following uses are permitted:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Bed & Breakfast
6. Home Child Care
7. Home occupation
8. One-family dwelling
9. Professional residence-office
10. Two-family dwelling

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Adaptive re-use of historic barns
2. Cottage industry
3. Licensed child care
4. Municipal building or facility
5. Private outdoor recreation
6. Public outdoor recreation
7. Public utility substation
8. Religious institution
9. Telecommunications facility
10. Tourist homes which do not exceed fifteen guests
11. Transmission lines
12. School
13. Veterinary office
14. Wildlife refuge

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	80,000 sq. ft
Lot Frontage Minimum:	150 feet
Front Yard Minimum:	50 feet
Side and Rear Yard minimums:	25 feet each
Building Coverage Maximum:	15%
Building Height Maximum:	35 feet
Lot Depth Minimum:	200 feet
General Regulations:	As set forth in Article III herein

**Table 2.03**  
**RURAL RESIDENTIAL (R-40) DISTRICT**

**A. Purpose.** To protect fragile natural resources, including wetlands, surface waters and wildlife habitat; promote continued agricultural activities; prevent strip development along major road corridors; and encourage moderate density residential development, including clustered housing, and limited commercial uses in appropriate locations.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Bed & Breakfast
6. Cemetery
7. Home child care
8. Home occupation
9. One-family dwelling
10. Professional residence-office
11. Two-family dwelling

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Adaptive re-use of historic barns
2. Business services
3. Cottage industry
4. Flea Market
5. Licensed child care
6. Office buildings
7. Planned residential development
8. Private outdoor recreation
9. Public outdoor recreation
10. Religious institution
11. School
12. State of municipal building or facility
13. Telecommunications facility
14. Transmission lines
15. Veterinary office

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	120 feet
Lot Depth Minimum:	200 feet
Front Yard Minimum:	50 feet
Side and Rear Yard Minimums:	25 feet each
Building Coverage Maximum:	15 percent
Building Height Maximum:	35 feet
General Regulations:	As set forth in Article III herein

**Table 2.04  
MODIFIED RESIDENTIAL (MR) DISTRICT**

**A. Purpose.** To maintain the residential character of the area while allowing for commercial uses in a well designed manner that avoids the pattern of strip development that has occurred elsewhere along this highway corridor, and to permit development densities that are moderate relative to other commercial districts.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structure.
4. Agricultural and forest uses
5. Bank
6. Bed & Breakfast
7. Home Child Care
8. Home occupation
9. One-family dwelling
10. Public outdoor recreation
11. Professional residence-office
12. Religious institution
13. School
14. Two-family dwelling

**C. Conditional Use.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Business services
2. Community center
3. Elderly housing
4. Indoor recreation
5. Licensed child care
6. Mortuary
7. Multi-family unit dwelling
8. Office building
9. Private club
10. Public utility substation
11. Religious institution
12. Restaurant/Bar
13. Retail store
14. Telecommunications facility
15. Transmission lines
16. Veterinary office w/o outdoor kennel

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**D. Area, Yard, Coverage, Height and General Regulations:**

	<u>Residential Uses</u>	<u>Nonresidential Uses</u>
Lot Area Minimum:	30,000 sq. ft	30,000 sq. ft
Lot Frontage Minimum:	120 feet	200 feet
Lot Depth Minimum:	200 feet	250 feet
Front Yard Minimum:	50 feet	50 feet
Side and Rear Yard Minimums:	25 feet each	25 feet each and 100 feet abutting residential district
Building Coverage maximum:	15 percent	25 percent
Building Height maximum:	35 feet	35 feet
General Regulations:	As set forth in Article III herein	

**Table 2.05**  
**MEDIUM DENSITY RESIDENTIAL (R-20) DISTRICT**

**A. Purpose:** To encourage moderate density residential neighborhoods in appropriate settings, and to allow for limited non-residential uses compatible with the residential setting.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Bank
6. Bed & Breakfast
7. Home child care
8. Home occupation
9. Mobile home park as provided in Section 4.06
10. Multiple-family dwelling
11. One-family dwelling
12. Other residential-uses approved by the DRB
13. Professional residence-office
14. Two-family dwelling

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Business services
2. Elderly housing
3. Licensed child care
4. Office buildings
5. Planned residential development
6. Public outdoor recreation
7. Religious institution
8. School
9. State or municipal building or facility
10. Telecommunications facility.
11. Transmission lines

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	One-family dwelling, 20,000 sq. ft Two-family dwelling, 36,000 sq. ft Multiple-family dwelling, average at least 12,000 sq. ft per dwelling unit
Lot Frontage Minimum:	100 feet
Lot Depth Minimum:	150 feet
Front Yard Minimum:	50 feet
Side Yard Minimum:	25 feet
Rear Yard Minimum:	25 feet
Building Height Maximum:	35 feet
Building Coverage Maximum:	20 percent
General Regulations:	As set forth in Article III herein

**Table 2.06**  
**COMMERCIAL (CG) DISTRICT**

**A. Purpose.** To allow a variety of commercial uses consistent with the area's function as a regional commercial and service center; strengthen the integration of land uses through a system of interconnected roads, driveways and sidewalks/pathways; maintain consistently high standards of site design; and protect and strengthen adjacent residential neighborhoods from adverse impacts associated with incompatible uses.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Automobile sales & service
6. Bank
7. Business services
8. Home child care
9. Home occupation
10. Hospital
11. Hotel
12. Indoor and outdoor recreation
13. Mortuary
14. Motel
15. Office building
16. Parking facility
17. Private club
18. Restaurant, bar
19. Retail store
20. Shopping center

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Drive-through use
2. Dormitories
3. Contractor's yard
4. Elderly housing
5. Gasoline service station
6. Licensed child care
7. Light manufacturing
8. Nursing home
9. One-family dwelling
10. Public utility substation
11. Religious institution
12. School
13. State or municipal building or facility
14. Telecommunications facility
15. Transmission lines
16. Two-family dwelling
17. Warehouse

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	25,000 sq. ft
Lot Frontage Minimum:	120 feet
Lot Depth Minimum:	150 feet
Lot Front Yard Minimum:	50 feet

Lot Rear Yard Minimum:	25 feet, or 100 feet abutting residential districts
Side Yard Minimum:	25 feet or 50 feet abutting residential districts
Building Height Maximum:	60 feet
General Regulations:	As set forth in Article III herein



**Table 2.07**  
**HIGHWAY COMMERCIAL (HC) DISTRICT**

**A. Purpose:** To promote the continued economic viability of this important regional commercial center in a manner that improves the function and appearance of the district, improves traffic flow, enhances pedestrian circulation, protects water quality in the Stevens Branch and provides access to open space and important natural features.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Automobile sales & service
6. Bank
7. Business Services
8. Drive-through use
9. Freight or trucking terminals
10. Home child care
11. Home occupation
12. Hospital
13. Hotel
14. Indoor and outdoor recreation
15. Mortuary
16. Motel
17. Motor vehicle, mobile home, trailer, farm implement, contractor's equipment sales and service
18. Nursing home
19. Office building
20. One-family dwelling
21. Parking facility
22. Places of public assembly, entertainment and recreation
23. Private club
24. Restaurant, bar
25. Retail store
26. Shopping center
27. Warehouse
28. Wholesale sales and distribution service

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Animal hospital, veterinary office, provided that any structures for the housing of animals shall be at least 200 feet from any residential district
2. Car wash
3. Contractor's yard
4. Drive-in theater
5. Gasoline service station
6. Multiple family dwelling
7. Licensed child care
8. Light manufacturing with retail
9. Religious institution
10. School institution
11. State or municipal building or facility
12. Telecommunications facility
13. Transmission lines
14. Two family dwelling

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**Table 2.07**  
**HIGHWAY COMMERCIAL (HC) DISTRICT**  
**[Continued]**

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	25,000 sq. ft
Lot Frontage Minimum:	120 feet
Lot Depth Minimum:	150 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	25 feet, or 100 feet abutting residential districts
Side Yard Minimum:	25 feet of 50 feet abutting residential districts
Building Height Maximum:	45 feet
General Regulations:	As set forth in Article III herein

**Table 2.08**  
**LIGHT INDUSTRIAL (LN) DISTRICT**

**A. Purpose:** to encourage a wide range of industrial and commercial enterprises at low densities while maintaining the rural character of the surrounding area and protecting adjacent residential neighborhoods from adverse impacts associated with incompatible uses.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Airport
6. Animal hospital, veterinary office, provided that any structures for the housing of animals shall be at least 200 feet from any residential district
7. Automobile sales and services
8. Business services
9. Contractor's yard
10. Freight & trucking terminal
11. Gasoline station
12. Indoor and outdoor recreation
13. Light manufacturing and on-premises products related retail sales
14. Machinery and transportation equipment, sales, service and repair
15. Mine, quarry, sand or gravel pit
16. Nursing home
17. Office building
18. Research or laboratory facilities
19. Retail store
20. Service and repair facilities
21. State or municipal building or facility
22. Warehouse or wholesale use

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Hazardous waste management facilities.
2. Licensed child care
3. Motel
4. One family dwelling
5. Public utility
6. Religious Institution
7. Restaurant/Bar
8. Solid waste management facilities certified by the State - excluding Transfer Station.
9. Telecommunications facility
10. Transmission lines
11. Two family dwelling

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**Table 2.08**  
**LIGHT INDUSTRIAL (LN) DISTRICT**  
**[Continued]**

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	150 feet
Lot Depth Minimum:	200 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	25 feet, or 100 feet abutting residential districts
Side Yard Minimum:	25 feet or 100 feet abutting residential districts
Building Height Maximum:	40 feet
General Regulations:	As set forth in Article III herein

**Table 2.09**  
**INDUSTRIAL (IN) DISTRICT**

**A. Purpose:** to promote a regional industrial and employment center by allowing a variety of industrial, manufacturing, service and office uses are permitted at moderate densities; maintain consistently high standards of site design; and protect and strengthen adjacent residential neighborhoods from adverse impacts associated with incompatible uses.

**B. Permitted Uses.** The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Agricultural and forest uses
5. Animal hospital, veterinary office, provided that any structures for the housing of animals shall be at least 200 feet from any residential district
6. Contractor's yard
7. Freight or trucking terminal
8. Health, welfare or education facilities or centers serving the needs of the community.
9. Manufacturing industries - warehouse or wholesale use
10. Machinery and transportation equipment, sales, service and repair
11. Mine, quarry, sand or gravel pit
12. Salvage Yard
13. One or two-family dwelling in accordance with subsection E, below.
14. Service and repair facilities

**C. Conditional Uses.** The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Gasoline station
2. Hazardous waste management facilities.
3. Indoor and outdoor recreation
4. Licensed child care
5. Public utility
6. Religious institutions
7. Solid waste management facilities certified by the State - excluding Transfer Station.
8. State or municipal building or facility
9. Telecommunications facility
10. Transmission lines

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted or allowed as conditional uses in the district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**Table 2.09**  
**INDUSTRIAL (IN) DISTRICT**  
**[Continued]**

**D. Area, Yard, Coverage, Height and General Regulations:**

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	100 feet
Lot Depth Minimum:	150 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	25 feet or 100 feet abutting residential districts
Side Yard Minimum:	25 feet or 50 feet abutting residential districts
Building Height Maximum:	50 feet
General Regulations	As set forth in Article III herein

**E. Pre-existing Dwellings:** One and two-family dwellings which are in existence and occupied for residential purposes prior to January 1, 2001 may be altered or expanded with the approval of the Zoning Administrator in accordance with Section 3.01. Home occupations and home child care facilities are also permitted in accordance with Section 4.04.



**Table 2.10**  
**TOWN CENTER (TC) DISTRICT**

**A. Purpose:** To create a traditional multiple-use area that is scaled to the pedestrian and can serve as a gathering place and community center; to create an economically viable core with a mixture of retail, office, residential, and services uses, built on a small-scale that is conducive to pedestrian activity. This concept is more fully described in *The Berlin Mall Village Center Study* and accompanying map.

**B. Permitted Uses.** The following uses are permitted after issuance of a zoning permit by the zoning administrator.

1. Accessory dwelling
2. Accessory use
3. Accessory structures
4. Automobile sales & service
5. Bank
6. Bed & Breakfast
7. Business services
8. Elderly Housing
9. Home child care
10. Home occupation
11. Hospital
12. Hotel
13. Indoor and outdoor recreation
14. Licensed day care
15. Multiple-family dwelling
16. Nursing home
17. Office buildings
18. One-family dwelling
19. Other residential-uses approved by the DRB
20. Parking facility
21. Private club
22. Professional residence-office
23. Restaurant, bar
24. Retail store
25. Two-family dwelling

**C. Prohibited Uses.** The following uses are prohibited in the (TC) District.

1. Animal hospitals, kennels, stables
2. Adult Uses
3. Communications tower
4. Contractor's yard
5. Drive-up window
6. Funeral Homes
7. Gasoline service stations
8. Hazardous waste management facilities
9. Laboratories
10. Private or Commercial outdoor swimming pools
11. Storage facility

An applicant may apply for Conditional Use approval for uses not listed above, provided the DRB finds that in addition to other specific and general standards set forth in these regulations, the proposed use meets the following specific standards:

1. Such use is of the same general character as those permitted in this district, and
2. Such use will not be detrimental to the other uses within the district and the adjoining land uses.

**Table 2.10**  
**TOWN CENTER (TC) DISTRICT**  
**[Continued]**

**D. Area, Yard, Coverage, Height and General Regulations:** See also Wilbur Smith Associate's *The Berlin Mall Village Center Study* dated November 2004.

Lot Area Minimum:	10,000 sq. ft
Lot Frontage Minimum:	50 feet
Lot Depth Minimum:	100 feet
Front Yard Minimum:	15 feet
Rear Yard Minimum:	10 feet
Side Yard Minimum:	10 feet
Building Height Maximum:	45 feet
Building Coverage Maximum:	75%
General Regulations:	As set forth in Article III herein



## **Article III. General Regulations**

### **Section 3.01 ABANDONMENT OF STRUCTURES**

Within two (2) years after work on an excavation for a building has begun and substantial progress toward completion has not occurred, or within two (2) years after a permanent or temporary building or structure has been destroyed, demolished or abandoned, all structural materials shall be removed, covered over or filled to the normal grade by the owner.

### **Section 3.02 ACCESS, DRIVEWAYS & FRONTAGE REQUIREMENTS**

- (A) No land development may be permitted on lots which do not either have frontage on a public Class I, II, III road or on public waters, or, with the approval of the Development Review Board, frontage by means of a Class IV road or by a permanent easement or right-of-way at least twenty feet in width, to such lots or water.
1. All driveways entering onto Town roads must be approved by the Select Board with regard to grade, culverts, ditching, safety, and visibility (See Subdivision Regulations Section 900 and VT ACT A76 & B71). Driveways entering State roads must be approved by VTrans (Vermont Agency of Transportation).
  2. A lot which is the terminus of a private right-of-way need not have a specific amount of frontage on the right-of-way.
- (B) Single family and two-family residences are subject to the following requirements:
1. A lot or parcel of land shall have only one driveway, except that for every whole multiple of three hundred feet of continuous road frontage in excess of the district frontage minimum, a lot or parcel of land may have one additional driveway. Driveways constructed under this provision shall be no closer than 200 feet to each other.
  1. All driveways shall be no more than twenty feet wide at the junction of the driveway and the public traveled way. This width shall be measured twenty feet from the edge of the traveled way.
  2. Where two separate lots adjoin each other, the two lots may combine their driveways into a single driveway located at the common property line. Any such driveway may not exceed twice the width of a single driveway.
  3. All driveways shall join the public road at an angle as close to ninety (90) degrees as is reasonably possible, and no driveway shall join the public way where the angle formed by the centerline of the driveway and the centerline of the public road is less than forty-five (45) degrees nor more than one hundred thirty-five (135) degrees.
- (C) For all uses other than those enumerated in subsection (B) above, each lot or parcel may have one or more driveways subject to the review and approval of the Development Review Board in accordance with Section 3.02 and the following:
1. In reviewing the proposed driveways plan, the Development Review Board may require data and studies as necessary and shall consider the following:

- a. Traffic characteristics, to include volume, density, speed, direction and composition.
  - a. Sight distance.
  - b. Alignment and orientation with respect to the public highway and other driveways.
  - c. Predominant turning movements.
  - d. Internal traffic circulation.
  - f. Public safety.
  - g. Character of the area affected.
- 2. Proposals for driveways shall be supported by sufficient evidence on the impact of said driveways on area traffic. The Development Review Board may require that such evidence be prepared by a professional traffic consultant or other recognized authority.
  - 3. The Development Review Board in granting approval of the proposed driveways may impose appropriate conditions and safeguards in the interest of public safety and/or to minimize the impact of the driveway on the area traffic.
  - 4. Where traffic control devices are required as a condition of the approval, the applicant will be responsible for the installation of the traffic control devices.
  - 5. All driveways shall conform to Vermont Agency of Transportation (VTrans) standards applicable to such driveways, specifically standard sheets currently published by VTrans numbered A-76 and B71.

In no event shall a driveway be constructed less than 150 feet from the nearest public street intersection, unless no other reasonable access is available.

- 6. All driveways shall be so located and constructed so as to provide a safe distance as defined in Sight Distance Standards, A-76, B71, and said Standards are hereby incorporated in and made a part of these Regulations.

(D) Lots with frontage on Route 302 and Paine Turnpike north of Crosstown Road, and subject to site plan approval by the Development Review Board in accordance with Section 3.12, shall meet the following requirements intended to better manage access and improve vehicular and pedestrian safety, economic vitality and scenic character of the streetscape.

- 1. Parking areas shall be located to the side and rear of buildings unless such location is not feasible due to site conditions, existing site development, or nature of the business which prevent an alternative arrangement.
- 2. Sidewalks shall be required within each site to connect building entries with parking areas and public sidewalks where they exist.
- 3. Where possible, the number and size of curb cuts shall be limited to a single access. In instances involving pre-existing curb cuts not in compliance with these standards, the Development Review Board may require the reduction, consolidation or elimination of non-complying curb cuts. The Board may approve additional accesses in the event that:
  - a. The additional access is necessary to ensure vehicular and pedestrian safety; or

- b. The strict compliance with this standard would, due to the presence of one or more physical features (e.g., rivers and streams, steep slopes, wetlands), result in a less desirable site layout and design than would be possible with the allowance of an additional access; or
  - c. A traffic management plan is developed and implemented which will improve vehicular and pedestrian safety and result in a traffic circulation and parking arrangement within the site that better achieves the standards set forth under Section 3.02 than would be possible with a single access; or
  - d. The parcel(s) is occupied by multiple uses (e.g., shopping centers, PUDs) and the additional access would result in better traffic circulation and safety than a single access.
4. Access shall be limited to an approved width, and shall not extend along the length of road frontage; in the case of excessively wide pre-existing driveways, the Development Review Board may require the reduction in driveway width as a condition of site plan approval unless such reduction would place an undue burden on the continued operation of an existing land use.
- In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one public road, the Development Review Board may require provision for shared access between adjoining properties or limit access to the property to a side street or secondary road. Requirements for shared access may be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
5. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one public road, the Development Review Board may require provision for shared access between adjoining properties or limit access to the property to a side street or secondary road. Requirements for shared access may be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
6. Driveway connections to parking areas on adjacent properties, or provision for future connection, shall be required unless such connections are not practical due to site conditions. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to Section 3.02.

### **Section 3.03 CONVERSIONS & CHANGES IN USE**

A conversion or a change in the use of land, existing buildings or other structures is subject to the provisions of these regulations as follows:

- (A) The proposed use shall be subject to all the requirements of these regulations pertaining to such use, including but not limited to any district, access, and/or parking requirements, as well as any other applicable municipal, state or federal regulations currently in effect.
- (B) A conversion or change of use from one or more permitted uses to one or more substitute or additional permitted uses requires a zoning permit issued by the Zoning Administrator under Section 5.02.



- (C) A conversion or change of use from a permitted to a conditional use, or from a conditional use to another conditional use, requires conditional use approval under Section 5.06.
- (D) Where there is a conversion or change of use involving increased water use and wastewater generation, including but not limited to the conversion of a seasonal or accessory dwelling to a single family dwelling, a zoning permit shall not be issued by the Zoning Administrator until a wastewater disposal permit has been approved by the Berlin Sewage Officer or Health Officer.
- (E) Changes or conversions involving nonconforming uses and/or noncomplying structures also are subject to and will be reviewed under Section 3.11.
- (F) Existing buildings may be used for seasonal storage in any district, excluding the Highland Conservation District.

#### **Section 3.04      EQUAL TREATMENT OF HOUSING**

- (A) In accordance with the Act, no provision of this bylaw shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality except upon the same terms and conditions as conventional housing is excluded.
- (B) Provisions for the establishment of mobile home parks are included under Section 4.06.
- (C) Accessory dwelling units, as required by the Act, are permitted in all districts in which one-family dwellings are permitted.
- (D) Group homes occupied by six or fewer residents, as defined by the Act, shall be treated as a one-family dwelling under these regulations.

#### **Section 3.05      EXISTING SMALL LOTS**

- (A) Any lot in individual and separate, non-affiliated ownership from surrounding properties in existence on the effective date of these regulations may be developed for the purposes permitted in the district in which it is located, even though not conforming to the minimum lot dimensional (width, depth, or square footage) requirements, if such lot is not less than one eighth acre in area with a minimum depth or dimension of forty feet, provided that
  - 1. Any wastewater disposal system shall be designed by a registered professional engineer or certified site technician. The registered professional engineer or certified site technician shall certify in writing to the Zoning Administrator that it was installed as designed.
  - 2. Safe and adequate water supply shall be assured as determined by the Town Health Officer.
- (B) An existing small lot which is in affiliated or common ownership with one or more contiguous lots as of the effective date of these regulations, or which subsequently comes under affiliated or common ownership with one or more contiguous lots, shall be deemed merged with the contiguous lot(s) for the purposes of these regulations. However, such lots shall not be deemed merged and may be separately conveyed if, in accordance with the Act, all of the following requirements are met:
  - 1. The lots are conveyed in their pre-existing, nonconforming configuration; and

2. On the effective date of this bylaw, each lot had been developed with a water supply and wastewater disposal system; and
3. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
4. The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, pursuant to the Act.

### **Section 3.06 HEIGHT REQUIREMENTS**

- (A) No structure shall exceed the zoning district building height maximum, except as provided in this Section. The principal structure height limit shall apply to all accessory buildings, structures and appurtenances including, but not limited to, water towers, communications towers, antenna structures, or appurtenances other than the customary rooftop television or radio antenna.
- (B) Height in excess of the zoning district building height maximum may be approved by the Development Review Board as a conditional use in accordance with Section 5.06 on its written findings, after hearing, that:
  1. The additional height applied for is customary to the proposed use such as, but not limited to, church steeples, flagpoles and agricultural silos; or
  2. The additional height applied for is necessary to the operation or function of the proposed use such as, but not limited to, industrial silos, elevator shafts, water towers, chimneys; or
  3. The additional height applied for is required for public necessity or public safety such as, but not limited to, air navigational aids, beacons, and high voltage transmission line
- (C) In granting additional height approval for any structure, accessory building or appurtenance, the Development Review Board shall be guided by and base its findings on the following criteria:
  1. Public safety
  2. Impact on the character of the neighborhood
  3. Visual impact
  4. That the additional height is not intended for habitation or full-time work station use.
  5. The intended purpose of this Section
  6. Conditional use standards under Section 5.06.

### **Section 3.07 FILL**

- (A) In any district, dumping of refuse and waste material for fill in a municipally unauthorized area is prohibited.
- (B) Loam, soil, rock, stone, gravel, sand, cinders, and other inert materials may be used for fill up to 500 cubic yards.

Fill from 500 to 1500 cubic yards must be approved by the Zoning Administrator.

Fill exceeding 1500 cubic yards must be reviewed by the Development Review Board taking into consideration the following:

1. Contours of the land before and after the fill.
2. The amount to be brought in.
3. Truck traffic including the need for road crews and traffic control.
1. Condition before and after of the road to be used, and weight limit permits.
5. Days of the week and hours of operation.

(C) The temporary storage (not to be confused with “commercial stockpiling”) and redistribution of materials incidental to development of a site is allowed on a parcel without approval of the Zoning Administrator, providing:

1. Such materials are not stored within setback areas.
2. Such materials are used on the site on which such materials are stored and are not removed from the site.
3. Such materials are not stored on the site for more than one calendar year.
4. Such materials are stored not less than fifty feet from the edge of any river, stream, or wetland.
5. Adequate provision is made for erosion control and dust control to prevent off-site sedimentation of surface water and impacts to air quality in the vicinity of the site.
6. The development of the site has been reviewed by the Zoning Administrator or the Development Review Board.

### **Section 3.08 LANDSCAPING REQUIREMENTS**

- (B) A landscaping plan shall be required to be submitted in all districts for all development requiring Site Plan Review prior to the issuance of a zoning permit by the Zoning Administrator.
- (B) Screening and landscaping of development subject to site plan review under Section 5.05 shall be provided and maintained where required by the Development Review Board on their written findings, after hearing, that such landscaping is necessary to control soil erosion and/or to minimize adverse scenic impact.

### **Section 3.09 LOT & YARD REQUIREMENTS**

- (A) **Accessory Dwellings:** One accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling is allowed as a permitted use under these regulations providing:
1. The property has sufficient wastewater capacity.
  2. The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
  3. Applicable setback, coverage, and parking requirements specified in the bylaws are met.
- (B) **Reduction of Lot Area.** No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of these Regulations shall be smaller than herein prescribed for each district. The provisions of this Section shall not apply when part of a lot is taken for a public purpose or for a development approved as a Planned Residential Development under Section 4.10.

- (C) **Lots with on-site Water Supply and Septic Disposal.** Minimum residential lot sizes in areas without public sewer and water systems shall conform to the Town of Berlin Health Regulations.

### **Section 3.10 MISCELLANEOUS STATUTORY REQUIREMENTS**

- (A) The provisions of these regulations shall be subject to such additions, modifications or exceptions as herein provided by the following general regulations.
- (B) In accordance with the Act the following provisions have been included in these regulations:
1. Equal Treatment of Housing (Section 3.04)
  2. Existing Small Lots (Section 3.05)
  3. Group Homes (Section 3.04D)
  4. Home Child Care Facilities (Section 4.04)
  5. Home Occupations (Section 4.04)
  6. Required Frontage on, or access to, public roads or waters (Section 3.09)
  7. In accordance with the Act, the following uses are subject to conditional use review under Section 5.06, and may only be regulated with respect to size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, and landscaping or screening requirements:
    - a. Public utility power generating plants and transmission lines.
    - b. Regional solid waste management facilities certified by the State – excluding Transfer Station.
    - c. Hazardous waste management facilities for which a notice of intent to construct has been received under state law.
  8. In accordance with the Act, reasonable provision has been made for the following uses within designated districts, which are subject to all applicable provisions of these regulations including district requirements:
    - a. State or community owned and operated institutions and facilities (see State or Municipal Public Facilities).
    - b. Public and private schools and other educational institutions certified by the Vermont Department of Education (see School).
    - c. Churches, convents and parish houses (see Religious Institution).

- d. Public and private hospitals (see Hospital)
- 9. If any by-law is enacted with respect to any land development subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply.

### **Section 3.11 NON-CONFORMING USES & STRUCTURES**

(A) The following provisions shall apply to all structures and uses existing on the effective date of these Regulations, or which do not conform by reason of any subsequent amendment to these Regulations:

(B) **Non-Conforming Use:** Any nonconforming use may be continued indefinitely but:

1. Shall not, under any circumstances, be re-established if such use has been discontinued for a period of 12 months.
2. Shall not be changed to another nonconforming use without the approval of the Development Review Board as a conditional use in accordance with Section 5.06. The Board may only grant such approval upon finding that the change to another nonconforming use is in compliance with the standards set forth in Section 3.11, and that the proposed use of the same or a more restricted nature than the existing use with regard to the scale, intensity of operation and impact on adjacent properties.
3. Shall not be enlarged or expanded unless approved by the Development Review Board as a conditional use in accordance with Section 5.06.
4. In rendering a decision in favor of an applicant under this subsection, the Development Review Board may attach such conditions to such enlargement or expansion of a lawful use or change to another nonconforming use as it may consider necessary and appropriate under the circumstances to implement the purposes of the Zoning Regulations and the Plan of the municipality.

(C) **Non-Conforming structures:**

1. May be restored to a safe condition if the structure or portions thereof are declared unsafe by a proper authority.
2. Shall not be enlarged, altered, or replaced in-kind unless approved by the Development Review Board as a conditional use in accordance with Section ~~3.11~~ 5.06, except such structures requiring repair or rebuilding if damaged by fire or accident provided that reconstruction is started within one year and substantially completed within two years.
3. Nothing in this Section shall be deemed to prevent normal maintenance and repair of noncomplying structures, provided, that such action does not increase the degree of noncompliance.

### **Section 3.12 OFF-STREET PARKING & LOADING SPACE REQUIREMENTS**

- (A) Off-street parking spaces shall be provided as set forth below. A parking space shall be at least nine feet by nineteen feet, and shall be on or contiguous to the lot in development.
1. **Residential:** one-family, two-family dwelling units: two parking spaces for every dwelling, multiple-family dwelling units: seven parking spaces for every three units.
  2. **Professional residence office:** two parking spaces, plus one additional parking space for every three hundred square feet of office space (excluding bathroom, hallways, storage areas, and other like spaces).
  3. **Hotel, Motel, Tourist Home, Boarding House:** One space for every guest room.
  4. **Dormitory, Fraternity, Nursing Home, Hospital:** One space for every two beds.
  5. **Places of Public Assembly:** One parking space for every three seats. Where there are not seats, one parking space shall be provided for every fifty square feet of floor space (excluding bathrooms, hallways, storage areas, and other like spaces).
  6. **Business, Professional, and Medical Offices:** One space for every two hundred square feet of floor space (excluding bathrooms, hallways, storage areas, and other like spaces).
  7. **Commercial, Business, Retail Stores:** One parking space for every motor vehicle used in the business, plus one parking space for every two hundred square feet of the commercial and/or business area and one additional parking space for each employee per single shift with the largest employee count (excluding bathrooms, hallways, storage areas, and other like spaces).
  8. **Restaurant, Eating and Drinking Establishments:** One parking space for every three seats.
  9. **Other Uses:** As required by the Development Review Board
  10. In reviewing parking space requirements, the Development Review Board shall consider the adequacy of the provision for snow removal or storage, aesthetic impact, drainage and traffic circulation.
- (B) The required number of contiguous off-street parking spaces may be reduced or increased by the Development Review Board under conditional use or site plan review, to the extent that the it is demonstrated that a reduction or increase is warranted as a result of:
1. unique use, or
  2. overlapping coverage, or
  3. the requirement is shown to be excessive or insufficient.

### **Section 3.13 SIGNS**

- (A) **Signs in all districts.** No signs shall be permitted in any district except as specifically permitted herein as follows:

1. The signs described in Table 3.01 are permitted in all districts and shall not require a zoning permit:

<b>Table 3.01 Exempted Signs</b>	
(1)	One professional or home occupation sign, not exceeding five square feet.
(2)	One temporary sign, not exceeding twenty-five square feet, advertising agricultural or forest products for sale for a period not to exceed one hundred and twenty (120) days.
(3)	One temporary sign, not exceeding six square feet, advertising real estate for sale be posted for each 1,000 feet of lot frontage on a public road. So-called "sold by" signs are prohibited
(4)	Signs erected, maintained or administered by the Town of Berlin, or the State of Vermont, whether maintained at private or public expense
(5)	Small signs without advertising displayed for the direction, instruction or convenience of the public such as those identifying rest rooms, freight entrances, telephone and exits. Such signs shall be on the premises of the activity or facility described and shall not exceed two square feet in area.
(6)	Temporary signs providing safety or emergency information to the public.
(7)	Signs, not to exceed 32 square feet, to be maintained for not more than 45 days erected by fairs, or expositions, or signs announcing an auction, or a campaign drive, or of a civic, political, philanthropic service, or religious organization.
(8)	Signs indicating Lawn or Garage Sale, and the like, to be displayed for not more than 14 continuous days.

1. All signs shall be maintained, in good repair, and in stable condition
  2. No establishment shall contain more than one sign except as specifically provided below. Any such sign may designate more than one business or activity.
  3. Off-premise signs are prohibited.
- (B) **Commercial, business and industrial signs.** Except as specified in Table 3.01, and subsection (C), below, all signs on each commercial, business, and industrial individual establishment's premises are subject to the following restrictions:
1. The total allowable sign area for wall signs for an establishment shall be two square feet of sign area for each one linear foot of building or structure frontage facing the thoroughfare from which the sign is to be viewed. No single establishment, regardless of

size, shall be allowed more than three hundred square feet of total sign area (excluding freestanding signs).

2. Any single sign over ~~80~~ 120 square feet requires approval by the Development Review Board.
3. No sign shall be permitted within ten feet of a property line and ten feet of the highway Right of Way.
4. No sign shall be permitted which prevents a clear and unobstructed view of official signs.
5. No sign shall contain moving parts or flashing or blinking lights.
6. No sign shall be erected, attached or maintained on trees or utility poles or drawn or painted on rocks or other natural features.
7. No lighting of signs shall be permitted which causes a public nuisance or traffic hazard.
8. Free-Standing ground signs shall meet the standards set forth in Table 3.02 below:

<b>Table 3.02 Free Standing Sign Requirements</b>	
(1)	All free-standing signs shall be of a type permanently mounted on a pole or similar structure except A-Frame signs. A-Frame signs are permitted providing they are removed nightly.
(2)	Height of free-standing signs shall not exceed twenty five feet and shall be displayed at a height similar to other free-standing signs in the area.
(3)	No more than two viewing surfaces shall be permitted. The surfaces shall be identical unless otherwise, approved by the Development Review Board.
(4)	Maximum area, excluding the support structure, shall be sixty-four square feet. The area shall be determined by measuring only one of two allowable viewing surfaces. <u>The maximum number of freestanding signs per property shall be one.</u>
(5)	The owner shall provide means, such as curbing, fencing and/or locations, to minimize the traffic accident hazard potential of the pole or supporting structure.

9. All wall signs shall meet the following standards:
  - a. no wall sign may display more than one viewing surface;
  - b. no wall sign may ~~exceed~~ extend above the highest point of the building eaves line ~~unless approved by the Development Review Board~~; and
  - c. no wall sign may extend more than one foot from the face of a building.

- (C) **Shopping Centers Signs.** In addition to the standards set forth above, signs associated with the operation of shopping centers, and located on the same premises, shall comply with the following:



1. For new shopping centers or for extensive revision of signing in existing shopping centers, the shopping center owner shall submit a comprehensive and coordinated plan to the Development Review Board for site plan approval and shall be responsible for adherence to the permit conditions by the tenants.
2. ~~Individual establishments within the shopping centers may display one wall sign only.~~ Individual free-standing ground signs are prohibited.

When incorporated in a comprehensive plan for an entire shopping center, establishment name signs, not exceeding eighty square feet in area, may be placed at each establishment's main entrance. Such signs shall be uniform in size, design, and color for the entire shopping center.

3. A shopping center owner may erect one free-standing ground sign not to exceed 150 square feet in total area (excluding support structure).
- (D) **Illuminated Signs.** Signs may be illuminated such that all lighting is directed so that the lighting illuminates only the surface area of the sign and is effectively shielded to prevent hazardous beams or rays of light from being directed at any portion of the main traveled way of a public road. Review criteria shall include, but is not limited to, impact on the neighborhood, uses, character of the neighborhood, nuisance, and light pollution. Flashing, oscillating and revolving signs shall not be permitted, unless necessary for public safety or welfare. Changes to illuminated letters or panels shall not occur more than once during any 24 hour period.

### Section 3.14 STREAM PROTECTION

- (A) To prevent soil erosion, protect wildlife habitat and maintain water quality, an undisturbed, vegetated buffer strip shall be maintained for a minimum of 75 feet from all streams and rivers and 50 feet from any wetland. The buffer strip shall be measured from the mean water mark or delineated wetland boundary. No development, excavation, fill or grading shall occur within the buffer strip, and vegetation shall be left in an undisturbed state, with the exception of minimum clearing and associated site development necessary to accommodate the following:
1. road, driveway and utility crossings;
  2. streambank stabilization and restoration projects, in accordance with all applicable State and Federal regulations.
  3. bicycle and pedestrian paths and trails.
  4. public recreation facilities and improved river/lake accesses.
- (B) Exceptions to the prohibitions above may be approved by the Development Review Board in accordance with Section 5.06 provided:
1. All existing vegetation should be retained to the extent feasible;
  2. Placement of structures will minimize impacts to the riparian buffer;
  3. Appropriateness of any deviations from the required buffer widths shall be evaluated on a case-by-case basis after consideration of all functions and values of undisturbed including but not limited to:
    - a. Protection of water quality

- b. Stormwater treatment
  - c. Filtration of sediment and nutrients
  - d. Protection of aquatic biota and habitat
  - e. Protection of natural stream stability
  - f. Maintenance of wildlife travel corridors
  - g. Ice damage control
  - h. Flood damage mitigation
  - i. Aesthetics
4. Efforts to enhance existing vegetation including supplemental plantings should be maximized.
- (C) For development subject to conditional use review, minimum required setback and/or undisturbed buffer strip distances may be increased as appropriate based on site, slope or soil conditions and the nature of the proposed use.

### **Section 3.15 TEMPORARY USES & STRUCTURES**

The following temporary permits may be issued by the Zoning Administrator for a period not exceeding one year, conditioned upon agreement by the owner to remove the structure or discontinue use upon expiration of the permit:

- (A) For nonconforming uses incidental to a construction project.
- (B) For temporary and seasonal roadside stands for the sale of locally grown agricultural products.

### **Section 3.16 WALLS & FENCES.**

- (A) Fences used for agricultural purposes and walls and fences six feet or less, at least 10' from the traveled portion of the highway, and which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic, or interfere with highway maintenance or roadway drainage, shall not be subject to these regulations.
- (B) All other walls and fences greater than six feet shall require review and approval by the Development Review Board. The Development Review Board shall, after hearing, make findings and impose conditions and safeguards based on the following criteria:
  - 1. sight distance
  - 2. highway maintenance
  - 3. traffic hazards
  - 4. drainage
  - 5. character of the area affected
  - 6. public safety

### **Section 3.17 OUTDOOR LIGHTING**

- (D) Purpose. The Town's rural character is enhanced by an ability to clearly view and enjoy the night sky. While some outdoor lighting may be necessary for safety and security, inappropriate or poorly designed or installed lighting can create unsafe conditions and

nuisances for adjoining property owners, cause sky glow which obstructs night views of the sky, and results in the unnecessary use of electric power.

- (E) General Standards. All new lighting or changes to existing lighting shall be reviewed under Section 5.05 Site Plan Review in addition to this section. To ensure appropriate lighting while minimizing its undesirable effects, the following general standards apply to all outdoor lighting in the Town of Berlin, with the exception of temporary holiday lighting which is exempt:

1. All outdoor lighting shall be kept to the minimum required for safety, security, and intended use, consistent with the character of the neighborhood in which it is located.
2. Permanent outdoor lighting fixtures shall not direct light upward or onto adjacent properties, roads, or public waters; shall minimize glare; and shall not result in excessive lighting levels which are uncharacteristic of a rural area. Lighting fixtures shall be cast downward and/or designed to minimize glare. Such fixtures shall include recessed, shielded, or cutoff fixtures, and/or low luminance lamps (e.g., maximum of 75 watts or 1,000 lumens).
3. Outdoor lighting fixtures are to include timers, dimmers, and/or sensors to reduce energy consumption and eliminate unneeded lighting.
4. Exterior lighting shall be cut-off fixtures as defined by Illuminating Engineering Society of North America (IESNA). Exceptions to this standard to accommodate a particular "period" or architectural style, providing the maximum initial lumens generated by each fixture not to exceed 2,000 lumens (equivalent to a 150 watt incandescent bulb) may be permitted.

- (F) Conditional Use Lighting Standards. For lighting installations associated with uses subject to conditional use review under 5.06, the Development Review Board also may require the following:

1. Information regarding exterior lighting fixtures, including fixture type, mounting location and height, illumination levels and distribution, and color, to be submitted as part of the conditional use application. A lighting plan, prepared by a qualified engineer or lighting expert, may be required as appropriate for larger projects.
2. The burial of electrical service to outdoor lighting fixtures.
3. Security lighting, where deemed necessary by the Board, shall be shielded and aimed so that illumination is directed only on to the designated area and not cast on other areas.
4. Outdoor fixtures shall only be illuminated during the hours of operation for non-residential uses unless specifically approved by the Development Review Board in accordance with Sections 5.05 and 5.06.

- (G) The Board may modify or waive the requirements of this section under conditional use review under 5.06, or on appeal under section 6.04, if it finds that in so doing it will not jeopardize the stated intent under Subsection (A), or that such a modification or waiver is required to meet an overriding public purpose

## Article IV. Specific Use Provisions

### Section 4.01 ADAPTIVE RE-USE OF HISTORIC BARNs

- (A) To encourage the economic viability of maintaining and restoring historic barns which are no longer associated with a viable agricultural enterprise, the following standards shall apply to all barns listed on the Vermont Historic Sites and Structures Survey as being eligible for listing on the National Register of Historic Places.
- (B) Structures which shall be considered appropriate for adaptive reuse include any structure, excluding buildings designed and used as single family dwellings, which:
1. has historical or architectural significance to the Town, as determined by listing on the Vermont Historic Sites and Structures Survey, or determined to have become eligible for listing on the Vermont Historic Sites and Structures Survey since the time of its most recent publication; and
  2. was built prior to 1940; and
  3. Has a minimum floor area of 800 square feet.
- (C) Notwithstanding the permitted and conditional uses allowed in each district, historic barns may, with the approval of the Development Review Board in accordance with Section 5.06, be converted to the following uses:
1. Cultural facilities, including religious institutions, performance space, community centers or museums;
  2. Warehouse and storage facilities;
  3. Multi-family housing (not to exceed four units);
  4. Light industry (excluding outdoor storage or display);
  5. Office space.
- (D) In approving applications for the adaptive re-use of historic barns, the Development Review Board shall ensure that the proposed use complies with all general and/or specific use regulations set forth in these regulations.

### Section 4.02 CAMPERS, TEMPORARY SHELTERS, and STORAGE OF MOTOR VEHICLES

- (A) It shall be unlawful for any person to park, for the purpose of habitation, a camper (travel trailer, recreation vehicle) or other temporary shelter (e.g., tent, tipi, yurt), except in an approved campground, an approved sales lot, or on a residential or undeveloped lot, subject to the following provisions.
- (B) One camper or other temporary shelter may be parked on a residential lot (lot in which a dwelling is the principal use) or undeveloped lot provided that:
1. it is not located within required setbacks for the district in which it is located; and

2. is not hooked up to a water system, septic system or other utilities.
- (C) A camper or other temporary shelter may be occupied up to six (6) months in accordance with the requirements for a single-family dwelling unit in the district in which it is located.
- (D) Any sewage generated by a camper or other temporary shelter shall be disposed of in accordance with all applicable local, state and federal regulations.
- (E) In all districts, any motor vehicle which is not State inspected must be stored in an enclosed building or placed in a rear or side yard and screened from view from any public road. Unregistered motor vehicles used for on-site property maintenance, such as snow plowing or agricultural purposes, are exempted from this provision.

#### **Section 4.03      EXTRACTION OF EARTH RESOURCES**

- (A) The extraction of earth resources for **personal use on site** up to 500 cubic yards is permitted without approval of the Zoning Administrator or the Development Review Board provided that the proposed operation will not:
1. Cause a hazard to public health and safety, or
  2. Adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic features.
- (B) The new, expanded, or resumption of extraction of earth resources **for commercial purposes** may be permitted in any district with Conditional Use approval by the Development Review Board.

The application shall include erosion control and site reclamation plans showing:

1. Existing and proposed grades, drainage, and depth to water table;
2. Erosion control;
3. Extent and magnitude of the proposed operation including proposed phasing; and
4. Site reclamation plans and finished grades at the conclusion of the operation.

In addition, the Board shall find that the proposed operation will not:

5. Cause a hazard to public health and safety, or
  6. Adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic features.
- (C) The Development Review Board may consider and impose conditions with regard to the following factors as it deems relevant:

5. Depth of excavation or quarrying;
6. Slopes created by removal (contours before and after);
7. Effects on surface drainage on and off site;
8. Storage of equipment and stockpiling of materials on-site;
9. Hours and days of operation for blasting, trucking, and processing;
10. Effects on adjacent properties due to noise, dust, or vibration;
11. Effects on traffic and road conditions, including potential physical damage to public highways and bridges.
12. Creation of nuisances or safety hazards;
13. Temporary and permanent erosion control;
14. Effect on ground and surface water quality and drinking water supplies;
15. Effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;
16. Effect on agricultural land;
17. Public safety and general welfare.

- (D) In accordance with the Act a performance bond, escrow account, or other surety acceptable to the Select Board shall be required to ensure reclamation of the land upon completion of the excavation to include any regrading, reseeding, reforestation, or other reclamation activities that may be required. This provision specifically does not apply to mining or quarrying operations; however, upon failure of the permit holder, their successors or assigns to complete site reclamation as required, the town may take legal action as appropriate to ensure site reclamation and cost recovery.

#### **Section 4.04 HOME OCCUPATIONS, HOME CHILD CARE & COTTAGE INDUSTRIES**

- (A) **Home Occupations** In accordance with the Act no provision of these regulations shall prevent a person from using a minor portion of a dwelling or accessory structure for the conduct of an occupation which is customary in residential areas and which does not change the character of the surrounding area or neighborhood. A permit application shall be submitted to the Zoning Administrator for a determination as to whether the proposed use is a home occupation as defined by these regulations. Home occupations, as distinguished from cottage industries under subsection (B), are permitted as an accessory use in all districts where residential uses are permitted in accordance with the following provisions:

1. The owner and operator of the home occupation shall reside in the principal dwelling.
2. The home occupation shall be conducted wholly within the principal dwelling or accessory structure.

3. Not more than fifty percent (50%) of the accessory structure or the total livable floor area in a dwelling is to be used for the home occupation. The home occupation must be incidental to the residential use of the premises.
4. No more than two (2) non-residents of the dwelling are to be engaged in said home occupation at any one time (in other words, three part-time employees are permissible provided no more than two are present at any one time), except that up to four non-members may be employed for a period not exceeding a total of 60 days in any calendar year.
5. No traffic shall be generated in volumes that would be greater than normally expected in a neighborhood of a similar type.
6. There shall be no exterior storage of materials or equipment (other than motor vehicles) for use in connection with the home occupation.

(B) **Home Child Care Facilities:** In accordance with the Act, a state registered or licensed child day care facility serving 6 or fewer children on a full time basis and up to 4 additional children on a part time basis, conducted within a single family dwelling by a resident of that dwelling, shall be considered by right to constitute a permitted single family residential use of the property. Such uses shall require a permit issued by the Zoning Administrator in accordance with Section 5.02. Nonresidential day care facilities, and those facilities operated from a dwelling which serve greater than 6 children, may be permitted in designated zoning districts as a conditional use subject to review under Section 5.06.

(C) **Cottage Industry.** Cottage industries (as distinguished from Home Occupations) may be permitted in designated zoning districts subject to conditional use review in accordance with Section 5.06 and the following provisions:

1. The owner and operator of the cottage industry shall reside on the lot.
2. The cottage industry shall be carried on within the principal dwelling and/or accessory structure(s) providing the use of such space does not change the character of the property or neighborhood.
3. The business shall not necessitate any change in the outward appearance of the dwelling unit or accessory structures on the lot.
4. The residents of the dwelling unit, and no more than four (4) non-resident employees may be employed on-site at any one time.
5. The business shall not generate traffic, including but not limited to delivery truck traffic, in excess of volumes that are characteristic of the neighborhood.
6. Adequate off-street parking shall be provided for all residents, employees and customers in accordance with Section 3.02.
7. Adequate provision for water supply and wastewater disposal shall be provided.
8. The business shall be visually compatible with neighboring lots and uses; landscaping and screening may be required as appropriate. In addition, any outdoor storage of materials, including building or construction materials, unregistered vehicles or heavy

equipment, must be completely screened year-round from the road and from neighboring properties.

9. On-site wholesale and/or retail sales shall be limited to products produced on the premises.
10. The permit for a cottage industry shall clearly state that the industry is a home-based business which is accessory to the principal residential use, and shall be retained in common ownership and management. A cottage industry may be subdivided and/or converted for sale or use apart from the residential use only if it meets all current municipal and state regulations pertaining to such use, including density, dimensional, and other requirements for the district in which it is located. Separate permits shall be required as appropriate prior to subdivision, sale and/or conversion.
11. There shall be no undue adverse impact or nuisance to neighboring properties such as from, but not limited to, noise, discharge of chemicals, or excessive light.

#### **Section 4.05 MOBILE HOMES.**

It shall be unlawful for any person to park a mobile home except in accordance with these Regulations as follows:

- (A) In an approved mobile home park.
- (B) In any zoning district in which a one-family dwelling is permitted, in accordance with all density, dimensional and associated standards for the specific district.

#### **Section 4.06 MOBILE HOME PARKS.**

- (A) No person shall construct or operate a mobile home park without first obtaining Site Plan approval from the Development Review Board in accordance with Section 4.06 and a permit from the Zoning Administrator.
- (B) Application for a mobile home park site plan approval shall be made to the Development Review Board. The application shall be accompanied with a Site Plan and drawings showing property lines, area, contours showing any proposed grading, roads, walkways, lots, parking, water lines, sanitary sewer and storm sewer drainage facilities, garbage collection stations and electrical distribution.
- (C) In addition to site plan review standards set forth in Section 5.05, the following regulations shall apply to all mobile homes in mobile home parks:
  1. Mobile home park area, not less than five acres, with ten percent of total area for recreation purposes. There shall be at least 12,000 square feet of area per mobile home.
  2. Mobile home lots shall be at least 8,000 square feet in area, and at least sixty feet wide by one hundred and twenty feet in depth.
  3. Park access roads shall be at least fifty (50) feet wide, with a gravel or paved surface, at least twenty-four (24) feet wide, and at least twelve (12) inches in depth of compacted gravel.



4. Parking, at least two spaces for each lot.
  5. Each lot shall have a water supply source approved by all appropriate State agencies.
  6. Each lot shall have attachment for sewage disposal approved by all appropriate State agencies.
  7. No mobile home shall be closer to a public street than fifty (50) feet, nor closer to a property line than twenty-five (25) feet.
  8. A strip of land at least twenty-five feet in width shall be maintained as a landscaped area abutting all mobile home park property lines.
- (D) The replacement of an individual mobile home within an approved mobile home park shall require a zoning permit issued by the Zoning Administrator in accordance with Section 4.06. Such replacement is subject to review and approval under Section 5.08 if all or a portion of the new mobile home is to be located in a designated floodplain.

#### **Section 4.07 SWIMMING POOLS & PONDS.**

- (A) All swimming pools or ponds with a capacity of more than 3,500 gallons shall be subject to these Regulations and shall require a zoning permit issued by the Zoning Administrator in accordance with Section 5.02.
- (B) No swimming pool or pond subject to these Regulations shall be placed or constructed within a front yard setback of less than fifty feet nor a side yard or rear yard setback of less than twenty-five (25) feet.

#### **Section 4.08 WIRELESS TELECOMMUNICATIONS FACILITIES.**

This bylaw shall be known as the Wireless Telecommunications Facilities Bylaw of the Town of Berlin. Wireless telecommunication facilities shall include all wireless telecommunication providers, licensed and/or regulated by the Federal Communications Commission, and associated equipment and buildings.

##### **Section 4.08(a) Purpose**

The purpose of this bylaw is to protect the public health, safety, and general welfare of the Town of Berlin while accommodating the communication needs of residents and businesses. This bylaw shall:

- (H) Preserve the character and appearance of the Town of Berlin while allowing adequate wireless telecommunications services to be developed.
- (I) Protect the scenic, historic, environmental, and natural resources of the Town of Berlin.
- (J) Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.
- (K) Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers, and sites where possible and appropriate.

- (L) Facilitate the provision of wireless telecommunications services to the residences and businesses of the Town of Berlin.
- (M) Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.
- (N) Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals, and childcare facilities.

#### **Section 4.08(b) Consistency with Federal Law**

In addition to other findings required by the bylaw, the Development Review Board shall find that its decision regarding an application is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. The bylaw does not

- (A) Prohibit or have the effect of prohibiting the provision of wireless telecommunications services;
- (B) Unreasonably discriminate among providers of functionally equivalent services; or
- (C) Regulate wireless telecommunications services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications commission (FCC) regulations concerning such emissions.

#### **Section 4.08(c) Definitions**

**Adequate Capacity:** Capacity for wireless telephony is considered to be “adequate” if the grade of service (“GOS”) is p.05 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erlang B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, Adequate Capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the wireless telecommunications services facility in question, Adequate Capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the coverage area.

**Adequate Coverage:** Coverage for wireless telephony is “adequate” within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that most of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

**Antenna:** A device for transmitting and/or receiving electromagnetic waves, which is attached to a tower or other structure.

**Applicant:** A person who applies for a wireless telecommunications facility siting. An applicant can be the landowner, telecommunications service provider with the landowner’s written permission (or other legally designated representative), or the owner of the facility.

**Base Station:** The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

**Collocation:** Locating wireless communications equipment from more than one provider on a single site.

**dBm:** Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

**Facility Height:** The vertical distance measured from the base of the support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the facility height.

**Facility Site:** A property, or any part thereof, which is owned or leased by one or more telecommunications facility(s) and where required landscaping is located.

**FCC:** Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

**Frequency:** The number of cycles completed each second by an electromagnetic wave measured in hertz (Hz).

**Hertz:** (Hz) One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

**Location:** References to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be referenced to true North.

**Micro-Cell:** A low power mobile radio service wireless telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

**Monitoring:** The measurement, by the use of instruments in the field, or radio frequency exposure from wireless telecommunications facilities, towers, antennas, or repeaters.

**Monopole:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below-grade foundations.

**Permit:** Embodies the rights and obligations extended by the municipality to an operator to own, construct, maintain, and operate its facility within the boundaries of the municipality.

**Personal Communications Services:** Digital wireless telephone technology using higher frequency spectrum than cellular.

**Personal Wireless Services:** Commercial mobile services, unlicensed wireless exchange access services. These services include cellular services, personal communications services, specialized mobile radio services, and paging services.

**Repeater:** A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

**Scenic:** Scenic views may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A scenic view may be to a far away object, such as a mountain or a nearby object.

**Stealth Design:** A telecommunications facility design intended to blend into the surrounding environment. Examples of stealth designed facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements (like clock towers, bell steeples, silos), antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings.

**Telecommunications Provider:** An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

**Temporary Wireless Telecommunications Facility:** Any tower, pole, antenna, etc., designed for use while a permanent wireless telecommunications facility is under construction, or for a special event.

**Tower:** A vertical structure for supporting antenna(s) that transmit and/or receive telecommunications signals (television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication).

**View Corridor:** A three dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

**Wireless Telecommunications Facility:** All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves that carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or another owner or entity. Wireless telecommunications facilities may include structures, towers, or accessory buildings.

#### **Section 4.08(d) Permitted and Prohibited Locations:**

Wireless telecommunications towers or facilities may be permitted as conditional uses upon compliance with the provisions of this bylaw in all zoning districts except Highland Conservation and over 1000 feet elevation west of Route 12.

Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation may not be located in any of the following locations:

- (A) Closer than 75 ft. or the height of the tower horizontally including antennas and other vertical appurtenances (except in the case of a tower requiring guy wire anchors which must not be closer than 2 times the height of the tower horizontally), whichever is greater, to the boundary of the property on which the tower is located; to any structure existing at the time of the application which is used as either a primary or secondary residence or to any other building; to any existing public road right-of-way; to any river or perennial stream; to a State or Federally designated wetland; or to any known archeological site.

- (B) The habitat of any State listed Rare or Endangered Species.
- (C) Within 500 ft. horizontally from any Historic District or property eligible to be listed on the Federal Historic Register.
- (D) Closer than 1,000 ft. horizontally to any structure existing at the time of the application which is the property of any school.

#### **Section 4.08(e) Small Scale Facilities**

The placement of wireless telecommunications antennas, repeaters or microcells on existing buildings, structures, roofs, or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the Zoning Administrator, provided the antennas meet the applicable requirements of this bylaw, upon submission of

- (A) A final site and building plan.
- (B) A report prepared by a licensed mechanical or structural engineer indicating the structure's suitability for the wireless telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.
- (C) For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.

However, no such device may be located closer than 50' to an existing residence.

- (D) The following wireless telecommunications facilities are exempt from the requirements of this bylaw: police, fire, ambulance, and other emergency dispatch; amateur (ham) radio, citizens-band radio, single-use local business radio dispatch, and television antennas for home use. No FCC-licensed wireless telecommunications facility shall be considered exempt from the bylaw for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.

#### **Section 4.08(f) Application Requirements for Wireless Telecommunications Facilities Not Covered under Section 4.08(e).**

An applicant for a permit must be a wireless telecommunications service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Zoning Administrator at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

No construction, alteration, modification (including the installation of antennas for new uses) or installation of any wireless telecommunications tower or facility shall commence without a conditional use permit first being obtained from the Development Review Board.

In addition to information otherwise required in the Town of Berlin's Zoning Bylaws, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

- (A) The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
- (B) The name, address, and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
- (C) The names and addresses of the record owners of all abutting property and the names and addresses of the landowner, facility operator, and the wireless service providers.
- (D) A report from the appropriate qualified engineers that:
  - 1. Described the facility height, design, and elevation (a licensed structural engineer for this section).
  - 2. Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas (a radio-frequency engineer for this section).
  - 3. Describes the tower's proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the tower to accommodate (a licensed structural engineer for this section).
  - 4. Demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within 5 miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the residents and businesses of the Town of Berlin. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
  - 5. Demonstrates that the applicant has analyzed the feasibility of using "repeaters" or micro-cells in conjunction with all facility sites listed in compliance with Section 4.08(d) above to provide coverage to the Town of Berlin.
  - 6. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
  - 7. Describes the output frequency, number of channels, sector orientation, and power output per channel, as appropriate for each proposed antenna.
  - 8. Includes a written five-year plan for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town.
  - 9. Provides assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio-frequency exposure. The Development Review Board may hire independent engineers

to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times.

10. Includes other information required by the Development Review Board that is necessary to evaluate the request.
  11. Includes an engineer's stamp and registration number where appropriate.
- (E) A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.
- (F) For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure (to be provided to the Zoning Administrator at the time an application is submitted).
- (G) To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
- (H) A copy of the application or draft application for an Act 250 permit, if applicable.

The permit application shall be signed under the pains and penalties of perjury.

#### **Section 4.08(g) Site Plan Requirements for Wireless Telecommunications Facilities**

In addition to site plan requirements found elsewhere in the Town of Berlin's Zoning Bylaws, site plans for wireless telecommunications facilities shall include the following supplemental information:

- (A) Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two-mile radius of the proposed facility site.
- (B) Vicinity map showing the entire vicinity within a 2500-foot radius of the facility site including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights-of-way needed for access from a public way to the facility.
- (C) Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening, and roads.
- (D) Elevations showing all facades and indicating all exterior materials and color of towers, buildings, and associated facilities.
- (E) Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.



- (F) In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
- (G) Construction sequence and time schedule for completion of each phase of the entire project.

Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet.

#### **Section 4.08(h) Collocation Requirements**

An application for a new wireless telecommunications facility shall not be approved unless the Development Review Board finds that the facilities planned for the proposed structure cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

- (A) Existing towers in prohibited districts shall not be used for collocation sites unless the Development Review Board finds there is no more appropriate site in respect of district goals, project cost, technical feasibility, and consideration of §4409(b) in Section 4.08(a).
- (B) The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
- (C) The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
- (D) The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radio-frequency exposure.
- (E) Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonable or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
- (F) Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- (G) There is no existing or approved tower in the area in which coverage is sought.
- (H) Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate a minimum of four antennas when overall permitted height allows.

#### **Section 4.08(i) Access Roads and above Ground Facilities**



Where the construction of new wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within forest or forest fringe areas, and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the area. The Town may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same and where maintenance personnel can reasonably access the facility site on foot.

#### **Section 4.08(j) Tower and Antenna Design Requirements**

Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.

- (A) Towers, antennas, and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth design, including those which imitate natural features, may be required in visually sensitive locations.
- (B) In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall be not more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Development Review Board that the additional height is necessary in order to provide adequate coverage in the Town of Berlin or to accomplish collocation of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
- (C) Towers shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:
  - 1. The period of time during which the proposed tower would be viewed by the traveling public on a public highway;
  - 2. The frequency of the view experienced by the traveling public;
  - 3. The degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
  - 4. Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
  - 5. The distance of the proposed tower from the view point and the proportion of the facility that is visible above the skyline;
  - 6. The sensitivity or unique value of a particular view affected by the proposed tower;

7. Significant disruption of a viewshed that provides context to a historic or scenic resource.

The Board shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Board may identify an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.

- (D) All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than specified in Section 4.08(d)(A).
- (E) The area around the tower and telecommunications facilities shelter(s) shall be completely fenced and gated for security to a height of at least eight feet. No permanently-installed ladders shall reach below 12 feet above the ground.
- (F) Ground mounted equipment or antennas as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

#### **Section 4.08(k) Amendments to Existing Wireless Telecommunications Facility Permit**

An alteration or addition to any wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

- (A) Change in the number of buildings or facilities permitted on the site;
- (B) Addition or change of any equipment resulting in greater visibility or structural windloading or weight load, or additional height of the tower, including profile of additional antennas, not specified in the original application.

#### **Section 4.08(l) Tower Lighting and Signage; Noise Generated by Facility**

Unless required by the Federal Aviation Administration (FAA), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting or another location selected.

A sign no greater than two (2) square feet indicating the name of the telecommunications facility owner(s) and a 24-hour emergency telephone number, either local or toll-free, shall be posted adjacent to the entry gate. In addition, radio frequency radiation (RFR) warning signs, and the federal tower registration plate, where applicable, shall be posted on the fence or as specified by federal or state requirements. No Trespassing signs may be posted at the discretion of the telecommunications facility owner(s). No commercial signs or lettering shall be placed on a facility.

The Board may impose conditions to minimize the effect of noise from the operation of machinery or equipment upon adjacent properties.

#### **Section 4.08(m) Temporary Wireless Telecommunication Facilities**

Any wireless telecommunications facility designed for temporary use is subject to the following:

- (A) Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town of Berlin Development Review Board.
- (B) Temporary facilities are permitted not to exceed fifteen (15) days use during a special event.
- (C) The maximum height of a temporary facility is 50 feet from grade.
- (D) Temporary facilities must comply with all applicable portions of these regulations.

#### **Section 4.08(n) Continuing Obligations**

Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding radio-frequency exposure, and provide the basis for his or her representations. In addition, the report shall include names and addresses of the landowner, facility operator, and wireless service providers.

#### **Section 4.08(o) Facility Removal**

Abandoned, unused, obsolete, or noncompliant towers or facilities governed under this bylaw shall be removed as follows:

- (A) The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Berlin's Zoning Administrator certifying the continuing safe operation of every facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
- (B) Abandoned or unused towers or facilities shall be removed within 180 days of abandonment or of cessation of operations at the site unless a time extension is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of the abandonment or of cessation of operations at a site, the municipality shall notify the owner and may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
- (C) Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of a notice of violation at the site unless a time extension or negotiated solution is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality

may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner

- (D) An owner who has failed to file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
- (E) The Applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of Berlin and acceptable to the Board to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.

#### **Section 4.08(p) Maintenance Requirements**

The Applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the facility, the Town of Berlin may undertake such maintenance at the expense of the applicant or landowner.

#### **Section 4.08(q) Insurance Requirements**

The facility owner shall maintain adequate insurance on all facilities and present a Certificate of Insurance annually on January 15.

#### **Section 4.09(r) Fees**

Fees for filing an application to build or alter a wireless telecommunications facility shall be established by the Select Board. This schedule may be amended from time to time. Additional fees may include the reasonable costs of an independent technical assessment of the application that may be incurred during the review and permitting process.

#### **Section 4.08(s) Enforcing Agent**

The Zoning Administrator shall be the agent to enforce the provisions of this bylaw.

#### **Section 4.08(t) Severability**

If any portion of the bylaw is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this bylaw shall not be affected.

#### **Section 4.09 TELEVISION/TELECOMMUNICATION SATELLITE ANTENNA STRUCTURES.**

- (A) Television/telecommunication satellite antenna structures may be installed in all residential districts for residential use without a Zoning Permit, as long as the district's height limit, side, rear and front-yard setbacks are met.
- (B) All television/telecommunication satellite antenna structures, other than specifically exempted herein, shall be considered a structure that requires a Zoning Permit.

#### **Section 4.10 PLANNED UNIT DEVELOPMENT (PUD)**

(A) **Applicability.** The Development Review Board is hereby empowered to permit modifications from certain zoning regulations to permit planned residential developments under the criteria and procedure established in the Act. Modifications from the requirements of the Zoning Regulations by the Development Review Board for the Planned Residential Development is permitted subject to the conditions set forth below and Site Plan approval.

(B) **Purpose.**

1. To encourage compact, pedestrian-oriented development and redevelopment, and to promote a mix of residential and nonresidential uses, especially in downtowns, village centers, new town centers and associated neighborhoods.
2. To implement the policies of the Town Plan
3. To encourage any development in the countryside to be compatible with the use and character of the surrounding rural lands.
4. To provide for flexibility in site and lot layout, building design, placement and clustering of buildings, use of open areas, provision of circulation facilities, including pedestrian facilities and parking, and related site and design considerations that will best achieve the goals for the area as articulated in the Town Plan and Zoning Regulations within the particular character of the site and its surroundings.
5. To provide for the conservation of open space features recognized as worthy of conservation in the Town Plan and Zoning Regulations.
6. To provide for efficient use of public facilities and infrastructure.
7. To encourage and preserve opportunities for energy-efficient development and redevelopment.

(C) **Application & Review Procedures.** Applications for Planned Residential Development shall be reviewed concurrently with applications for subdivision approval in accordance with the Berlin Subdivision Regulations. In addition to the application materials required for subdivision review, applicants shall submit a statement setting forth all proposed deviations from the existing Zoning Regulations.

(D) **Standards.** The PUD shall be in conformance with the following standards:

1. The PUD is consistent with the purpose of this Section.
2. The use may be for residential and non-residential units and must be a prescribed use for the district in which it is located.
2. The PUD is an effective and unified treatment of the development possibilities on the project site, and the development plan makes appropriate provision for protection of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas and unique natural and manmade features.
3. The development is phased over a reasonable period of time in order that it will not cause an undue burden on municipal facilities and services.
4. District regulations on height and setbacks shall be met.
5. Adequate water supply and sewage disposal facilities shall be provided.

6. The Development Review Board may require that a percentage of the land be utilized for open space, recreation areas, and/or municipal purposes. The Development Review Board may establish conditions on use and maintenance of such lands as necessary to ensure preservation of said lands. Such conditions shall be recorded in the Town land records.
7. Proposed streets shall conform to Vermont Agency of Transportation A-76 standards, unless waived by the Development Review Board.
8. The land area not allocated to building lots and streets shall be permanently reserved as open space. Such land shall be held in corporate ownership by the owners of the units within the development. Membership in said corporation shall be mandatory for all residents of the development, and the developer shall include in the deed to the owners of the dwelling units the membership rights in and to the use of the open land. Such land shall be held in corporate ownership by the developer or other form of public or private interested group as acceptable to the Development Review Board.

## **Article V. Development Review Process**

### **Section 5.01 EXEMPTIONS TO THE REQUIREMENT FOR A PERMIT - PERMITS NOT REQUIRED**

Please note that all development in the Special Flood Hazard Area requires review under Section 5.09.

- (A) Development where construction has commenced prior to the effective date of these regulations, and development which has obtained all Town permits provided construction is substantially completed within one year of the effective date of these regulations.
- (B) Interior repairs, alterations, decorating; exterior maintenance, repair,
- (C) Fuel tanks for household heating of 500 gallons or less and is an accessory to a dwelling; placed according to the Vermont Gas code and NFIP regulations.
- (D) Stairways, handicap ramps (excluding deck or porch areas) which do not extend into or obstruct public rights-of-way; or interfere with corner visibility or sight distances for vehicular traffic, and meet setback requirements for the district.
- (E) Walls and fences for agricultural purposes five feet in height or less which do not extend into or obstruct public rights-of-way; or interfere with corner visibility or sight distances for vehicular traffic.
- (F) Landscaping, grading, and excavating associated with road and driveway maintenance and restoration, and yard improvements for single and two family residences only.
- (G) Non-commercial outdoor recreation which does not involve the development or use of structures (i.e., hiking, skiing).
- (H) Accessory structures (2 maximum) less than 80 sq. ft in floor area and less than 10' in height meeting setback requirements for the district.

### **Section 5.02 ZONING ADMINISTRATOR AUTHORITY**

Within 30 days of receipt of a completed application, the Zoning Administrator shall

Issue a permit in writing;

Refer the application to the Development Review Board in cases of Site Plan Review, Conditional Use Review, or Variance; or

Deny the application. A denial shall include a statement of the time in which appeals may be made.

If no action is taken within the 30 days, the application is deemed approved on the 31<sup>st</sup> day.

(A) **Issuance:** The Zoning Administrator may issue a permit for the following, without review by the Development Review Board, if all size and dimensional requirements are met, and if the use is permitted within the district.

1. Agricultural structures as defined by the Commissioner of Agriculture, Food and Markets in accordance with the Act. A zoning application shall be submitted to the Zoning Administrator prior to any construction. There is no fee charged.
2. Driveways (see Section 3.02)
3. One and two family dwellings (see Section 3.09)
4. Residential accessory uses or structures.
5. Residential accessory uses or structures in an existing PRD.
6. Home occupations within a one or two family dwelling (see Section 4.04).
7. Home child care facilities (Section 4.04).
8. Unless approved under Site Plan review or Subdivision application, fill from 500 to 1500 cubic yards (see Section 3.07).
9. Minor commercial and industrial landscaping, grading, and excavating associated with road and driveway maintenance and yard improvements,
10. Signs unless newly illuminated (see Section 3.13).
11. Walls and fences no higher than six feet which do not extend into or obstruct public rights-of-way; or interfere with corner visibility or sight distances for vehicular traffic. (see Section 3.16).
12. Swimming pools and ponds (see Section 4.07)
13. Extensions for one year for previously approved permits (see Section 6.03)
14. Security lighting unless included in an application for new development (see Section 3.17)
15. A conversion or change in use from one or more permitted uses to one or more substitute or additional permitted uses except as provided in Section 3.03.
16. Small scale wireless telecommunications facilities (see Section 4.08(e))
17. Other uses specifically exempted from site plan review under these bylaws.

(B) **Refer** the application to the Development Review Board for the following:

1. Site Plan Review (see Section 5.05)
2. Conditional Use Review (see Section 5.06)
3. Variance Review (see Section 5.07)



4. Flood Hazard Approval (see Section 5.09)
5. Appeals of the Zoning Administrator's Decision (see Section 6.04)
6. Other approvals as appropriate (See below).

(C) **Deny** the application if the proposed development is not allowed according to these Bylaws. The appellant may appeal the Zoning Administrator's decision to the Development Review Board (See 6.04).

### **Section 5.03 APPLICATIONS**

Unless listed as exempt in Section 5.01 above or elsewhere, all applications for development must include the following:

- (A) A completed application.
- (B) Fee as established by the Select Board
- (C) One set of detailed site plans (eight sets for applications requiring DRB approval), no larger than 11"x17" showing the following:
  1. location of property in relationship to the town and highways with scale and north arrow
  2. dimensions of the lot and property lines,
    1. existing and proposed easements
  4. location and sizes of the existing and proposed structures and their distances from the property lines.
  5. entrance or curb cut plans for approval by designated authority
  6. location and distances to existing and proposed wells, surface water, and wetlands as applicable.
  7. existing and proposed contours, if applicable
  8. sewer plans or septic plans with approval by the proper authority
  9. landscaping plans.

Larger-sized site plans (3 copies) not to exceed 24"x36" may be requested for submittal in advance or at the hearing.

- (D) Other information as may be required for Site Plan Review (see Section 5.05), Conditional Use Review (see Section 5.06), or State Agency Referral Requirements (see Section and Table 5.09).

### **Section 5.04 NOTICE OF HEARINGS**

Notice shall be given by publishing the date, place, and purpose of the hearing in a newspaper of general circulation in the Town, and posting the notice in at least two public places within the Town at least 15 days prior to the hearing date.

Notice of the hearing in the form of the written agenda shall also be sent by mail to the applicant and all abutters at least 15 days prior to the public hearing. The applicant shall provide current addressed and stamped envelopes for all abutters in addition to eight copies of the submitted application and documents.

## Section 5.05      **SITE PLAN REVIEW - PERMITTED USES**

**Permitted Uses** as designated in Article II, Tables 2.01 through 2.10, except for those listed in Section 5.06, must be reviewed under the General Standards criteria listed here.

A completed application, site development plan, fees, and supporting data as listed in Section 5.02, must be submitted to the Zoning Administrator who, with the applicant, will review the application and data for completeness and make recommendations for any additional supporting data deemed necessary or desirable. If the application, site plan, and supporting data are deemed complete, the application shall be scheduled and warned for the next applicable public hearing (see Notice of Hearings, Article V, Section 5.04) for Development Review Board to review the completed application.

**Review Procedure.** In its review the Board shall determine whether the proposed use or structure conforms to the General Standards set forth below and shall act to approve, approve with conditions, or disapprove the application. The Board shall act within 60 days of receipt of the completed application and shall issue a written decision including findings, conditions if any, and provisions for appeal. Failure to act within 60 days of receipt shall deem approval.

**General Standards:** The Board may consider and impose appropriate safeguards, modifications, and conditions relative to the following:

- (A) **Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** Vehicular access and intersections with roads shall meet all applicable Town and State design standards, including those set forth in Section 3.02. The Board may limit the number and size of curb cuts to a single access. In instances involving pre-existing curb cuts not in compliance with these standards, the Board may require the reduction, consolidation, or elimination of non-complying curb cuts. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one road, the Board may require shared access between adjoining properties or may limit access to a side street or secondary road. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
- (B) **Adequacy of circulation, parking, and loading facilities.**
  - 1. Parking shall be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. Parking shall be located to the rear or interior side (side not fronting on a public road) of buildings, unless otherwise permitted by the Board due to site conditions which would prevent the reasonable use of the property if this standard were strictly enforced. Large uninterrupted expanses of parking shall be avoided. A 10' landscaped buffer shall be provided between parking lots and property lines.
  - 2. Driveway connections to parking areas on adjacent properties, or provision for future connection, shall be required where feasible. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to Section 3.12.

3. Adequate parking facilities for people with disabilities shall be required
  4. Loading and delivery areas within the site shall be provided in accordance with Section 3.02, and shall be adequate to meet the anticipated needs of the use in a manner that does not interfere with parking, internal circulation, and landscaping.
  5. Provision shall be made for refuse storage and disposal, snow removal, and emergency access.
- (C) **Bicycle & Pedestrian Access.** Pedestrian circulation within the site, and access through the site to adjacent properties and along public roads, shall be provided. Such access may take the form of sidewalks, walking and/or bicycle paths, or other facilities depending upon the property's location, site conditions, and proximity to other facilities. Bicycle racks may be required for commercial and public uses intended for general public access. In addition, adequate access from the parking area and sidewalks to the building(s) that are open to the general public shall be provided for people with disabilities.
- (D) **Adequacy of Landscaping.** Landscaping shall enhance the features and conditions unique to each site, and should include a combination of shade and street trees, shrubs, planting beds, well-kept grasses, and ground covers. Landscaping is required in front and side yards, adjacent to parking areas, where rear yards abut residential properties or public roads, and as otherwise necessary to provide adequate screening.
- (E) **Hours of Operation.** Hours of operation may be limited to ensure that an approved establishment does not adversely affect the character and reasonable expectation of peace and quiet of residential neighborhoods.
- (F) **Setbacks:** Development must adhere to the district setbacks as outlined in Article II, Sections 2.01 through 2.10.
- (G) **Adequacy of exterior lighting.** Such fixtures shall not create excessive illumination or off-site glare, and shall be directed so as not to cause glare on adjacent roadways, cause excessive levels of illumination, or result in direct illumination of neighboring properties. The Board may restrict the maximum level of illumination on all or a portion of the property.
- (H) **Stormwater & Drainage.** Adequate provisions shall be made for the management of erosion, sedimentation, and stormwater runoff. Surface water runoff shall be minimized and if possible, detained on site. In instances involving the large-scale disturbance of the site, the creation of large expanses on impervious surfaces, development on slopes in excess of 15%, and/or proximity to surface waters, the Board may require a stormwater management and erosion control plan prepared by a professional engineer licensed by the State of Vermont. Such a plan shall provide detailed information regarding proposed erosion and sedimentation control measures to be employed during all stages of the development (including site preparation, construction, and post-construction).
- (I) **Utilization of renewable energy resources.** Proposed development should be designed so not to interfere with the sustainable use of renewable energy resources by diminishing the future availability of such resources or by eliminating nearby property owners' access to such resources.

- (J) **Municipal Services Impact Evaluation.** A statement by Fire Department, Police Department, and Highway Department and possibly School personnel as to the effects this development will have on services such as traffic, fire suppression, road condition, educational needs.
- (K) **Flood Hazard Review.** If the development is determined to be in the flood plain according to NFIP, refer to Section 5.04-9 for requirements.

## **Section 5.06      CONDITIONAL USE REVIEW.**

**Conditional Uses** as designated in Article II, Tables 2.01 through 2.10, must be reviewed by the Development Review Board under the General and Specific Standards criteria listed here.

A completed application, site development plan, fees, and supporting data as listed in Section 5.02, must be submitted to the Zoning Administrator who, with the applicant, will review the application and data for completeness and make recommendations for any additional supporting data deemed necessary or desirable. If the application, site plan, and supporting data are deemed complete, the application shall be scheduled and warned for the next applicable public hearing (see Notice of Hearings, Article V, Section 5.04) for Development Review Board to review the completed application.

**Review Procedure.** The Board will review the completed application and shall determine whether the proposed use or structure conforms to the General & Specific Standards set forth below and shall act to approve, approve with conditions, or disapprove the application. The Board may recess the convened hearing to require the submission of additional information from other parties. The Board shall act within 60 days of the close of the public hearing and shall issue a written decision including findings, conditions if any, and provisions for appeal. Failure to act within 60 days of close of the public hearing shall deem approval.

- (A) **General Standards.** Conditional use approval shall be granted by the Development Review Board only upon finding that the proposed development will not adversely affect the following:
1. **Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** Vehicular access and intersections with roads shall meet all applicable Town and State design standards, including those set forth in Section 3.02. The Board may limit the number and size of curb cuts to a single access. In instances involving pre-existing curb cuts not in compliance with these standards, the Board may require the reduction, consolidation, or elimination of non-complying curb cuts. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one road, the Board may require shared access between adjoining properties or may limit access to a side street or secondary road. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
  2. **Adequacy of circulation, parking, and loading facilities.**

- a. Parking shall be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. Parking shall be located to the rear or interior side (side not fronting on a public road) of buildings, unless otherwise permitted by the Board due to site conditions. A 10' landscaped buffer shall be provided between parking lots and property lines. Large uninterrupted expanses of parking shall be avoided.
  - b. Driveway connections to parking areas on adjacent properties, or provision for future connection, shall be required where feasible. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to Section 3.12.
  - c. Adequate parking facilities for people with disabilities shall be required
  - d. Loading and delivery areas within the site shall be provided in accordance with Section 3.12, and shall be adequate to meet the anticipated needs of the use in a manner that does not interfere with parking, internal circulation, and landscaping.
  - e. Provision shall be made for refuse storage and disposal, snow removal, and emergency access.
3. **Bicycle & Pedestrian Access.** Pedestrian circulation within the site, and access through the site to adjacent properties and along public roads, shall be provided. Such access may take the form of sidewalks, walking and/or bicycle paths, or other facilities depending upon the property's location, site conditions, and proximity to other facilities. Bicycle racks may be required for commercial and public uses intended for general public access. In addition, adequate access from the parking area and sidewalks to the building(s) that are open to the general public shall be provided for people with disabilities.
  4. **Adequacy of Landscaping.** Landscaping shall enhance the features and conditions unique to each site, and should include a combination of shade and street trees, shrubs, planting beds, well-kept grasses, and ground covers. Landscaping is required in front and side yards, adjacent to parking areas, where rear yards abut residential properties or public roads, and as otherwise necessary to provide adequate screening.
  5. **Hours of Operation.** Hours of operation may be limited to ensure that an approved establishment does not adversely affect the character and reasonable expectation of peak and quiet of residential neighborhoods.
  6. **Setbacks:** Development must adhere to the district setbacks as outlined in Article II, Sections 2.01 through 2.10.
  7. **Adequacy of exterior lighting.** Such fixtures shall not create excessive illumination or off-site glare, and shall be directed so as not to cause glare on adjacent roadways, cause excessive levels of illumination, or result in direct illumination of neighboring properties. The Board may restrict the maximum level of illumination on all or a portion of the property.
  8. **Stormwater & Drainage.** Adequate provisions shall be made for the management of erosion, sedimentation, and stormwater runoff. Surface water runoff shall be minimized

and if possible, detained on site. In instances involving the large-scale disturbance of the site, the creation of large expanses on impervious surfaces, development on slopes in excess of 15%, and/or proximity to surface waters, the Board may require a stormwater management and erosion control plan prepared by a professional engineer licensed by the State of Vermont. Such a plan shall provide detailed information regarding proposed erosion and sedimentation control measures to be employed during all stages of the development (including site preparation, construction, and post-construction).

9. **Utilization of renewable energy resources.** Proposed development should be designed so as not to interfere with the sustainable use of renewable energy resources by diminishing the future availability of such resources or by eliminating nearby property owners' access to such resources.
10. **Municipal Services.** An impact evaluation of municipal services shall be requested from the Fire Department, Police Department, and Highway Department and School personnel if applicable as to the effects this development will have on services such as traffic, fire suppression, road condition, educational needs.

**Traffic on roads and highways in the vicinity,** including the level of service on roads and highways as well as the impact on the neighborhoods and the impact on pedestrian traffic.

**The capacity of existing or planned community** facilities including schools, waste treatment or water supply systems, fire and police protection, highway maintenance or any other municipal service.

**Flood Hazard Review.** If the development is determined to be in the flood plain according to NFIP, refer to Section 5.09 for requirements.

**The character of the area affected; neighboring uses.** The essential character of the neighborhood or district in which the proposed use is located, includes the existing uses as well as the goals articulated for the district.

**Bylaws then in effect** including the stated goals and objective of the Berlin Town Plan.

- (B) **Specific Standards.** In granting such conditional use, the Board may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations and as follows:

1. Installation, operation, and maintenance of devices and/or methods of operation as may be reasonably required to prevent or reduce fumes, gas, dust, smoke, odor, noise, light, discharges, diversion of flows, vibration, or similar nuisance.
2. Impose conditions on open spaces between the proposed use and surrounding properties to prevent injury that might result from the proposed use to surrounding properties and neighborhoods. Care must be taken to protect existing residential neighborhoods and insure transitional buffers between districts.
3. The lot size, distances from adjacent or nearby uses and required setbacks may be increased in order to protect neighboring uses and values.

4. Intrinsic capability of the land to support the use including the fundamental nature of the land such as soils, hydrology, slope, and existing uses such as wetlands or deer yards.
5. Landscaping and fencing may be required as desirable to maintain and enhance the district character.
6. Design and location of signs, structures, and service areas may be restricted to maintain district character.
7. Water supply and sewage disposal systems designed and certified by a licensed professional engineer or licensed site technician and to the specifications and requirements of the State of Vermont agency having jurisdiction, or Town bylaws, whichever is more restrictive.
8. Controlling the location and number of vehicular access points to the property.
9. Increasing or decreasing the number of off-street parking or loading spaces required.
10. Specifying a specific time limit for construction, alteration, or enlargement of structures to accommodate a conditional use or time limit for operation of such including duration of the conditional use.

#### **Section 5.07 VARIANCE CRITERIA REVIEW**

The Development Review Board shall hear and decide upon requests for variances pursuant to the Act and appeal procedures under Section 5.07. The Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found and the findings are specified in its written decision:

- (A) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
- (B) That because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property;
- (C) That the unnecessary hardship has not been created by the appellant;
- (D) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- (E) That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.



On an appeal for a variance from the provisions of these regulations that is requested for a structure that is primarily a **renewable energy resource structure**, the Board may grant such variance only if it finds that all of the facts listed in the Act are found in the affirmative and specified in its decision.

In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. In no case shall the Board grant a variance for a use which is not permitted or conditionally permitted within the zoning district, or which results in an increase in allowable density.

## **Section 5.08      WAIVERS**

(A) **Exceptions to Setback Requirements for all Existing Lots.** ~~This provision is intended to provide relief to lots unduly burdened by zoning requirements adopted after the creation of said lots.~~ Requests for waivers are to be reviewed under Section 5.06: Conditional Use review standards in addition to the requirements below. The following exceptions to setbacks shall be permitted for lots that meet the following criteria: the existing principal use on the lot is a single family dwelling or a two-family dwelling.

1. **Side and Rear Setbacks.** A structure may encroach into the required side or rear setback up to a distance equal to 50% of the side or rear setback requirement of the district, but in no event shall a structure have a side setback of less than ten feet from a property line and ten feet from a right of way. The applicant shall prove that the proposed structure can not be reasonably constructed elsewhere on the lot so as not to encroach. The proposed structure shall be designed to minimize encroachment.
2. **Front Setbacks.** A structure may encroach into a required front setback up to a distance equal to 50% of the front setback requirement of the district. In no event shall a structure have a front setback of less than twenty feet from a property line and twenty feet from a streetline and in no case shall it be within ten feet of a right of way.
3. **Processing of a Request.** Any request under sections (1) and (2) above to expand an existing structure, or place a new structure may require the submission of survey data prepared by a licensed surveyor showing the location of affected property lines, existing and/or proposed structures, and any other information deemed necessary by the Zoning Administrator or DRB.

## **Section 5.09 FLOOD HAZARD REGULATIONS**

### **A. Statutory Authorization and Effect**

In accordance with 10 V.S.A. Chapter 32, and the Act, there is hereby established regulations for areas at risk of flood damage in the Town of Berlin, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under the Act.

### **B. Statement of Purpose**

It is the purpose of these regulations to:

1. Implement the goals, policies, and recommendations in the current municipal plan;



2. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;
3. Ensure that the selection, design, creation, and use of development is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair flood plain services or the stream corridor,
4. Manage the flood hazard area to make the Town of Berlin, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

### **C. Other Provisions**

#### **1. Precedence of Regulations**

The provisions of these flood hazard regulations shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction the provisions here shall take precedence.

#### **2. Warning of Disclaimer of Liability**

These regulations do not imply that land outside or within the areas covered by these regulations will be free from flood damages. This regulation shall not create liability on the part of the Town of Berlin, or any municipal official or employee thereof, for any flood damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

### **D. Lands to Which these Regulations Apply**

#### **1. Regulated Flood Hazard Areas**

These regulations shall apply to the Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, the Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources, which are hereby adopted by reference and declared to be part of these regulations. The location of the boundary shall be determined by the Zoning Administrator (ZA). If the applicant disagrees with the determination made by the ZA, a Letter of Map Amendment from FEMA shall constitute proof.

#### **2. Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas**

Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps, hereby referred to as FEMA documentation, shall be used to administer and enforce these regulations. Where available, applicants shall use data provided by FEMA, or State, or Federal agencies.

### **E. Summary Table: Development Review in Hazard Areas**

The hazard areas are not appropriate sites for new structures nor for development that increases the elevation of the base flood.

#	Activity	Hazard Zone	
		Special Flood Hazard Area	Floodway
	<b>P</b> Permitted <b>C</b> Conditional Use Review <b>X</b> Prohibited <b>A</b> Exempted		
1	New Structures	X	X
2	New Structures in Highway Commercial (HC) District	<u>C</u>	<u>X</u>
2	Storage	X	X
3	Improvements to Existing Structures	P, C	C
4	Small Accessory Structures	P	X
5	At Grade Parking	P	C
6	Replacement water supply or septic systems	C	C
7	Fill as needed to elevate new and existing structures	C	C
8	Grading	C	C
9	Road maintenance	A	A
10	Road and Driveway Improvements	C	C
11	Bridges and culverts	C	C
12	Channel management	C	C
13	Recreational vehicles	X	X
14	Open space, recreation	A	A
15	Forestry	A	A
16	Agriculture	A	A

## F. Development Review in Hazard Areas

### 1. Permit

A permit is required from the ZA for all development in all areas defined in Section D. Development that requires conditional use approval, non-conforming use approval, or a variance from the Development Review Board (DRB) under these flood hazard regulations must have such approvals prior to the issuance of a permit by the ZA. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in Sections F and G.

### 2. Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard Area where outside of the Floodway, and meeting the Development Standards in Section G., require only an administrative permit from the ZA:

- a. Accessory structures;
- b. Development related to on-site septic or water supply systems;
- c. Building utilities;
- d. At-grade parking for existing buildings.

### 3. Prohibited Development in Special Flood Hazard Areas

- a. New residential or non-residential structures (including the placement of manufactured homes); except as provided for in Section F. 4.e.
- b. Junk yards;
- c. New fill except as necessary to elevate structures above the base flood elevation;
- d. Accessory structures in the floodway;
- e. Recreational Vehicles Parks and Sales and Storage

### 4. Conditional Use Review

Conditional use review and approval by the DRB is required prior to the issuance of a permit by the ZA for proposed development of the following:

- a. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
- b. New or replacement storage tanks for existing structures;
- c. Improvements to existing structures in the Special Flood Hazard Area with no increase in total building square footage;
- d. Grading, excavation; or the creation of a pond;
- e. Improvements to existing roads;
- f. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
- g. Reconstruction or replacement of structures on existing sites in conformance with current FEMA Regulations.
- e. Notwithstanding the provisions of Section 509 E. and F., new structures in the Highway Commercial HC (District).

### 5. Exempted Activities

The following are exempt from regulation under this bylaw:

- a. The removal of a building or other structure in whole or in part;
- b. Maintenance of existing roads and storm water drainage;
- c. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
- d. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures the farmer must notify the ZA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

### 6. Nonconforming Structures and Uses

The DRB may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a flood hazard area provided that:

- a. The proposed development is in compliance with all the Development Standards in Section G of this bylaw;
- b. A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program and shall not result in a net increase in total building square footage ;
- c. An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.

## 7. Variances

Variances may be granted in writing by the DRB only in accordance with Section 5.07 of this ordinance and 44 VSA. Chapter 117 4424 (2) (E). In addition, it shall conform with 44 CFR Section 60.6, after a public hearing noticed as required by state law.

- a. Any variance issued in the Special Flood Hazard Area will not increase flood heights, and will inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions. A copy of such a variance shall be affixed to the deed of the property and recorded with the municipal clerk.

**G. Development Standards** – The criteria below are the minimum standards for development in the flood hazard areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

### 1. Special Flood Hazard Area

- a. *All development* shall be:

- Reasonably safe from flooding;
- Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
- Constructed with materials resistant to flood damage;
- Constructed by methods and practices that minimize flood damage;
- Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- Adequately drained to reduce exposure to flood hazards;
- Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.

- b. In Zones AE, AH, and A1 – A30 (as shown on FEMA documentation) where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is

demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.

*b.c Residential Structures to be substantially improved* in Zones A, A1-30, AE, and AH (as shown on FEMA documentations) shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition by a registered engineer;

*e. d.Non-residential structures to be substantially improved* shall:

- Meet the standards in Section G; or,
- Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic
- loads and effects of buoyancy; A permit for flood proofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

*d. e Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.

*e. f Fully enclosed areas that are above grade*, below the lowest floor, below BFE and subject to flooding, shall

- a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
- b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

*f. g Recreational vehicles* must be fully licensed and ready for highway use;

*g.h A small accessory* structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in Section G. (above).

*h.i On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.

*i.j Water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.

j.k. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

k. 1 The flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability;

m. Existing buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

## 2. Floodway Areas

- a. Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:
  - Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
  - Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
- b. Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

## H. Administration

### 1. Application Submission Requirements

a. Applications for development shall include:

- Where applicable, a site plan (prepared by a licensed civil engineer) that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
- A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the ZA and attached to the permit before work can begin;

### 2. Referrals

a. Upon receipt of a complete application for a substantial improvement or new construction the ZA shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424.

A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

b. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner. The Board should consider comments from the NFIP Coordinator at ANR.

### 3. Records

The Administrative Officer shall properly file and maintain a record of:

- a. All permits issued in areas covered by this bylaw;
- b. Elevation Certificates with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory ~~buildings-structures~~) in the Special Flood Hazard Area
- c. All flood proofing and other certifications required under this regulation; and,
- d. All decisions of the Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.

### **I. Enforcement and Penalties**

Any development within the Special Flood Hazard Area, and requiring Conditional Use Review, will be in violation of this bylaw if one of the following certificates is not provided to the Berlin Zoning Administrator's office by the expiration of the permit as stated in Section 6.02: an elevation certificate, flood proofing certificate, other FEMA required certificates, or other evidence of compliance as required in 44 CFR 60.3. The required certificate shall be prepared by a registered engineer and shall include an as-built plan confirming that the project complies with the permit requirements and conditions.

### **Section 5.10 ISSUANCE OR DENIAL OF A ZONING PERMIT**

Within 3 days of issuance of a permit, or 30 days following denial of a permit, the Zoning Administrator shall deliver a legible copy of the decision to the Town Clerk for recording as provided in 24 VSA, to the Listers, and post a copy at the Town Office for a period of 15 days. Additionally, posting of the issued permit by the applicant is required in a location which is in view from the public right-of-way most nearly adjacent to the subject property until the time for appeal has passed.

## **Article VI. Administration & Enforcement**

### **Section 6.01 RECORDING REQUIREMENTS.**

- (A) Pursuant to the Act within 30 days after the issuance or denial of a municipal land use permit, or within 30 days of the issuance of any notice of violation, the Zoning Administrator shall deliver



either the original, a legible copy, or a notice of the permit, denial or violation to the Town Clerk for recording in the land records of the town.

(B) For development within the Floodplain District, the Zoning Administrator shall also maintain a record of:

1. All permits issued for development in areas of special flood hazard;
2. The elevation, in relation to mean sea level, of the lowest floor, including basement, or all new or substantially improved buildings;
3. The elevation, in relation to mean sea level, to which buildings have been floodproofed;
4. All floodproofing certifications required under this regulation; and

(C) All variance actions, including the justification for their issuance.

#### **Section 6.02 EXPIRATION OF PERMIT**

The zoning permit shall run with the land. A zoning permit shall become void if the work described has not been substantially commenced within two years from the date of issuance.

#### **Section 6.03 EXTENSION OF PERMIT**

One, one-year extension may be granted in writing by the Zoning Administrator when determined to be in the interest of the town.

#### **Section 6.04 APPEAL OF DECISION**

Appeal of Zoning Administrator's decision/act to the Development Review Board

1. In addition to the applicant, any interested person may appeal a decision or act of the Zoning Administrator by filing a notice of appeal to the Development Review Board within 15 days of the date of such decision or act.

**Interested Person.** In accordance with the Act, the definition of an interested person includes the following:

The Town of Berlin or an adjoining municipality;

A person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the Town;

Any ten persons who may be any combination of voters or real property owners within the municipality who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this section, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.



Any department or administrative subdivision of the State owning property or any Interest therein within the Town or adjoining municipality, and the Vermont Agency of Commerce and Community Development; and

~~Berlin Conservation Commission.~~

2. The Development Review Board shall hold a public hearing within 60 days of receipt of the notice of appeal in accordance with the rules and bylaws set for public hearings and mail a copy of the hearing notice to the appellant not less than 7 days prior to the hearing date.
3. The Development Review Board may reject an appeal without hearing and render a decision within 10 days of the filing of the notice of appeal if it determines that the issues raised by the appellant have been decided in an earlier appeal, or are based on substantially or materially the same facts, by or on behalf of the appellant.
4. A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Zoning Administrator and Town Clerk.

**(B) Development Review Board's Decision to the Vermont Environmental Court**

1. Any interested person may appeal of decision of the Development Review Board within 30 days of such decision to the Vermont Environmental Court.
2. A list of interested persons who appeared and were heard at the hearing before the Board shall be provided to the appellant or his/her agent. Notice of appeal shall be sent to every interested person appearing and having been heard at the hearing before the Board.
3. The Notice of Appeal shall be in writing and include the following:
  - a. The name and address of the appellant;
  - b. A brief description of the property involved.
  - c. A reference to applicable bylaw provisions;
  - d. The relief requested by the appellant including any request for a variance from one or more provisions of this bylaw;
  - e. The alleged grounds why such relief is believed proper under the circumstances; and
  - f. Any request for a stay of enforcement which may be granted or denied by the Development Review Board.

**Section 6.05 CERTIFICATE OF OCCUPANCY**

- (A) A Certificate of Occupancy is no longer required for any structure. The failure to receive a Certificate of Occupancy for any development prior to the passage of these regulations shall not constitute a violation of the zoning regulations.

**Section 6.06 VIOLATIONS**

- (A) Violations. The commencement or continuation of any land development, subdivision, or use

which is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute in the name of the Town any appropriate action, injunction, or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.

- (B) Notice of Violation. No action may be brought under this section unless the alleged offender has had at least 7 days notice by certified mail that a violation exists. The warning notice shall state that a violation exists and that the alleged offender has an opportunity to cure the violation within the 7 days, that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the 7 days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the 7 day notice period and within the next succeeding 12 months.

#### **Section 6.07            ENFORCEMENT LIMITATIONS**

The Town shall observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act.

### **Article VII. Definitions**

#### **Section 7.01            INTERPRETATION.**

Except where specifically defined herein, all words used in these regulations shall carry their customary meanings, words used in the present tense include the future, and the singular includes the plural; the word "lot" includes "plot"; the word "shall" is mandatory; "occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be used or occupied"; "person" includes individual, partnership, cooperative, association, corporation, company, or organization." Doubt as to the precise meaning of any word used in these Regulations shall be clarified by the Development Review Board.

#### **Section 7.02            DEFINITIONS**

**ACCESSORY DWELLING UNIT:** An efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

**ACCESSORY STRUCTURE:** A structure which is incidental and subordinate to the primary use or structure of a lot or parcel of land, is located on the same lot as the primary structure or use, and is clearly related to the primary use.

**ACCESSORY USE** A use which is incidental and subordinate to the primary use of a lot or parcel of land, is located on the same lot as the primary use and is clearly related to the primary use.

**ADULT USE:** An establishment (such as a nightclub, bar restaurant, supper club, lounge, live or movie theater, cabaret, bookstore, or other) in which a person or persons appear in a state of nudity in the performance of their duties or material is available depicting person or persons in a state of nudity.

**AGRICULTURAL USE:** A parcel of land of at least two acres in size used for animal husbandry and/or used for the growing, harvesting or selling of agricultural or forest products and permitting thereon farm structures, and permitting as an accessory use riding and boarding stables thereon.

**AREA OF SPECIAL FLOOD HAZARD** is synonymous in meaning with the phrase “special flood hazard area” for the purposes of these regulations.

**BASE FLOOD** means the flood having a one percent chance of being equaled or exceeded in any given year (commonly referred to as the “100-year flood”).

**BASE FLOOD ELEVATION (BFE)** is the elevation of the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface.

**BASEMENT:** Any area of the building having its floor subgrade (below ground level) on all sides.

**BED & BREAKFAST:** A single family dwelling occupied by the owner or operator, in which not more than five rooms within the dwelling and/or in an accessory structure located on the same lot, are rented out to provide overnight accommodations to transient travelers. Individual cooking and eating facilities shall not be provided; breakfasts shall be the only meals served and shall be limited to overnight guests. The bed and breakfast shall function as a private home with house guests.

**BOUNDARY ADJUSTMENT:** A division of land for the purpose of adjusting boundaries between adjacent lots or parcels where no new lot is created. A boundary adjustment shall not result in the creation of a nonconforming lot or use.

**BUILDING:** A walled and roofed building that is principally above ground.

**BUILDING FRONT LINE:** Line parallel to the front lot line intersecting that point in the building which is closest to the front lot line. This includes all projections, whether enclosed or unenclosed, but does not include steps.

**BUSINESS SERVICES:** Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, building maintenance, employment service, management and consulting service, protective service, indoor equipment rental and leasing, commercial research, development and testing, photo finishing, and personal service.

**CAMP:** Land and structures thereon, such as cabins, trailers, shelters or tents, occupied for seasonal or temporary living quarters. [Note: It is common to include other qualifying standards, such as limitations of floor space, length of occupancy, and connection to public utilities.]

**CONTRACTOR’S YARD:** An unenclosed portion of a lot upon which a construction contractor maintains its principal office or a permanent business office, used primarily to store, rent and maintain construction equipment and other materials customarily used in the trade.

**CORNER LOT:** Lot which occupies the interior angle of the intersection of two street lines which make an angle of less than 135 degrees with each other.

**COTTAGE INDUSTRY:** A home-based business conducted by the resident of a single family dwelling, which is carried on within the principal dwelling and/or an accessory structure, and has no more than four (4) nonresident employees on-site at any one time (see Section 4.02; and Home Occupation).

**DEGREE OF NON-COMPLIANCE:** The extension of a structure which results in an additional encroachment of the noncomplying feature/element beyond that point which constitutes the greatest pre-existing encroachment. The expansion of the volume or area of a structure that does not comply with a building setback does not constitute an increase in the degree of noncompliance unless the expansion results in an encroachment upon the setback which is greater than the existing noncomplying encroachment.

**DEVELOPMENT:** means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**DRIVE-THROUGH USE:** An establishment which by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive services, goods, or be entertained while remaining in their vehicles. The drive-in use may be the principal or accessory use on a lot.

**DRIVEWAY:** A constructed way intended for motor vehicle access to/from a land lot to/from a public highway.

**DWELLING - MULTIPLE FAMILY:** Building used as living quarters by three or more families independently of each other.

**DWELLING - SINGLE FAMILY:** A building or structure containing one dwelling unit.

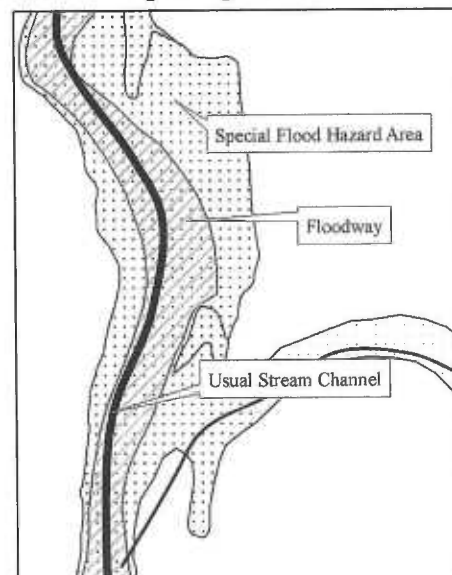
**DWELLING - TWO FAMILY:** A building or structure containing two dwelling units.

**DWELLING UNIT:** Building or part thereof used as living quarter for one family. The terms "dwelling," "one-family dwelling," or "dwelling group" shall not include a motel, hotel, boarding house, tourist home, or similar structure.

**ELDERLY HOUSING:** A facility consisting of three or more dwelling units, where the occupancy is limited to persons 50 years of age or older. The facility may include medical facilities or care.

**EXTRACTION OF EARTH RESOURCES:** The on-site removal of surface and subsurface materials, including soil, sand, gravel, stone, rock, minerals or similar materials. Typical uses include sand and gravel pits and quarries, and related operations such as the crushing, screening, and temporary storage of materials on-site (see Section 4.03). Specifically excluded from this definition is the grading and removal of dirt which is associated with and incidental to an approved site plan or subdivision, or an excavation associated with an accepted agricultural practice.

**FAMILY:** A group of two or more persons related by blood, marriage, adoption or civil union (as recognized by the State of Vermont), or a group of not more than five persons unrelated by blood, marriage, adoption or civil union, living together as a household, or a single person maintaining a household.



**FILL** means any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

**FIRM** see Flood Insurance Rate Map

**FLEA MARKET:** An enterprise offering tables or space not within a permanent structure for rent to individuals from which said individuals may offer goods for sale to the public.

**FLOOD:** means (a) a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**FLOOD INSURANCE RATE MAP (FIRM):** means an official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. In some communities the hazard boundaries are available in paper, pdf, or Geographic Information System formats as a Digital Flood Insurance Rate Map (DFIRM).

**FLOOD INSURANCE STUDY:** means an examination, evaluation and determination of flood hazards and, if appropriate, the corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and /or flood related erosion hazards.

**FLOODPLAIN OR FLOOD-PRONE AREA:** means any land area susceptible to being inundated by water from any source (see definition of “flood”).

**FLOOD PROOFING:** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY:** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Please note that Special Flood Hazard Areas and floodways may be shown on a separate map panels.

**FLOODWAY REGULATORY IN TOWN OF BERLIN:** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

**FLOOD, BASE FLOOD OR 100-YEAR FLOOD:** That flood having a one percent chance of being equaled or exceeded in any given year.

**FUNCTIONALLY DEPENDENT USE:** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

**HEIGHT:** Structure height, the vertical distance from the mean ground level (finished grade) of the highest structure face to the highest point on the structure.

**HISTORIC STRUCTURE:** means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) by an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in states without approved programs.

**HOME CHILD CARE:** A facility which operates according to a license or registration from the State of Vermont to provide care in the owner's residence on a regular basis for six or fewer children, excluding children of the owner, at any time who are under the age of sixteen, for periods not to exceed 24 hours.

**HOME OCCUPATION:** Accessory use conducted within a minor portion of a dwelling by the residents thereof which does not change the character of the district.

**KENNEL:** Any premises except where accessory to an agricultural use, where domestic animals are boarded, trained or bred.

**LETTER OF MAP AMENDMENT (LOMA):** is a letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the flood hazard zone based on information provided by a certified engineer or surveyor. This is used where structures or lots are located above the base flood elevation and have been inadvertently included in the mapped special flood hazard area.

**LICENSED CHILD CARE:** A facility which operates according to a license or registration from the State of Vermont in which care is provided on a regular basis for seven or more children under sixteen years of age, for periods not to exceed 24 hours. Such facilities include those commonly known as day care centers, day nurseries, playgroups or preschool.

**LOT:** Land occupied or to be occupied by a building and its accessory buildings, together with the required open spaces, having not less than the minimum area, width and depth required for a lot in the district in which such lands is situated and having frontage on a street, or other means of access as may be determined by the Development Review Board to be adequate as a condition of the issuance of a zoning permit for a building on such land. The creation of subdivisions with very irregularly shaped lots is not allowed if the purpose of the irregular shapes is solely to allow an extra lot or lots to be included in the subdivision.

**LOWEST FLOOR:** means the lowest floor of the lowest enclosed area, including basement, except an unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

**LOT FRONTAGE:** Distance measured along the width of the lot at the edge of the street line.



**MANUFACTURED HOME:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

**MOBILE HOME:** Moveable living unit with or without wheels, used for living quarters. A sectional prefabricated house can be considered a mobile home.

**MOBILE HOME PARK:** Land on which two or more mobile homes are parked and occupied for living purposes.

**MUNICIPAL LAND USE PERMIT:** As defined in the Act to include, as issued by the municipality: (1) final zoning, subdivision, site plan or building permits or approvals relating to subdivision and land development; (2) septic or sewage system permits; (3) final official minutes of meetings which relate to permits or approvals, which serve as the sole evidence of such permits or approvals; (4) certificates of occupancy, compliance or similar certificates; and (5) any amendments to the previously listed, permits, approvals and/or certificates.

**NEW CONSTRUCTION:** under these regulations, means structures for which the *start of construction* commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

**NONCOMPLYING STRUCTURE:** A structure or part thereof lawfully in existence as of the effective date of these regulations, but not in compliance with one or more provision of these regulations, including but not limited to building bulk, height setbacks, area, yards, density or off-street parking or loading requirements, where such structure conformed to all applicable laws, ordinances, and regulations prior to the enactment of these regulations.

**NONCONFORMING USE:** The use of land or structure lawfully in existence as of the effective date of these regulations, which does not conform with these regulations, including but not limited to allowed uses within the district in which it is located, where such use conformed to all applicable laws, ordinances and regulations prior to the enactment of these regulations.

**NON-RESIDENTIAL:** includes, but is not limited to: small business concerns, churches, schools, nursing homes, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

**NURSING HOME:** An institution or part of an institution that provides licensed, skilled, full-time nursing care and related services for patients who require medical, nursing, and/or rehabilitative services. The facility shall provide extended and/or intermediate care for those who by reason of advanced age, illness, infirmity, or mental impairments need acute, chronic, or convalescent care, or long-term care facility.

**OFFICE BUILDING:** A building used primarily for conducting the affairs of a business, profession (including medical), service, industry, or government, or like activity, that may include ancillary services for employees and visitors such as a restaurant or coffee shop, and newspaper/candy stand as permitted by these Regulations. This may also be known as a professional building. Building occupancy may be limited to one tenant or more tenants and/or the building's owner.

**PARKING SPACE:** Off-street space, which is at least nine feet wide and nineteen feet long, used for the temporary location of one licensed motor vehicle, but excluding an access driveway having direct access to a street or alley.

**PROFESSIONAL RESIDENCE - OFFICE:** Residence in which the occupant has an office and which is clearly secondary to the dwelling use for living purposes, provided it does not change the residential character of the district, and that not more than two (2) persons outside the-family is employed in said office.

**PUBLIC HIGHWAY:** A constructed surface in the public right-of-way intended for public vehicular traffic and meaning to be synonymous and interchangeable with the definition of public road, public street, road, street, highway, or traveled way.

**RECREATIONAL VEHICLE:** A vehicle which is (i) built on a single chassis, (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self propelled or permanently towable; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. Not to be confused with Manufactured Home. (Added by Town vote 11/7/00)

**RELIGIOUS INSTITUTION:** A facility used for conducting organized religious services on a regular basis, including accessory uses customarily associated with such a primary use. Includes church, synagogue, temple, mosque or other such place for worship and religious practice.

**RESTORATION:** Replace or rebuild a building or structure which has been substantially destroyed or demolished without regard to cause.

**RETAIL STORE:** Includes an enclosed restaurant, café, shop, store, retail service, personal service, and department store selling at retail prices, but specifically excluding gasoline sales and new and used car sales and service business or a trailer and mobile home sales and service business.

**RIGHT OF WAY:** A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a road, trail, water line, sanitary sewer line or other public utilities or facilities.

**SAND & GRAVEL EXTRACTION:** See Extraction of Earth Resources.

**SCHOOL:** Includes parochial, private, public and nursery school, college, university and accessory uses; and shall exclude commercially operated schools of beauty culture, business, dancing, driving, music, and similar establishments.

**SETBACK (S):**

1. Front line setback or front yard: the linear distance from the street line of any highway to the foundation of any structure or building. . Any building to be located on a corner lot at the intersection of two highways must meet the minimum front line set back from each highway.
2. Side line setback or side yard: the linear distances from the side property line(s) to [the nearest foundation of any structure or building.]
3. Rear line setback or rear yard: the linear distance from the rear property line to the nearest [foundation of any structure or building.]



4. Any building to be located on a lot containing a deeded right-of-way, must meet the minimum setback from the edge of such right-of-way.

**SHOPPING CENTER:** For the purposes of these Regulations, a shopping center consists of three or more directly adjoining retail and/or service establishment served by common curb cuts, access facilities or parking areas.

**SIGN:** Any device used for the purpose of bringing a subject displayed thereon attention of the public by visual communication, including but not limited to banners.

**SPECIAL FLOOD HAZARD AREA:** is the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. For purposes of these regulations, the term “area of special flood hazard” is synonymous in meaning with the phrase “special flood hazard area”. This area is usually labeled Zone A, AO, AH, AE, or A1-30 in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center: [msc.fema.gov](http://msc.fema.gov) Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of Special Flood Hazard Areas that are determined by detailed methods. Please note, where floodways have been determined they may be shown on separate map panels from the Flood Insurance Rate Maps.

**START OF CONSTRUCTION:** for floodplain management purposes, determines the effective map or bylaw regulates development in the Special Flood Hazard Area. The “start of construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

**STREAM:** Any surface water course in the Town of Berlin as depicted by the U.S. Geological Survey on topographic maps or as identified through site investigation; excluding artificially created irrigation and drainage channels

**STREET FRONTAGE:** The linear distance of the lot as measured along the edge of the street line.

**STREET LINE** Edge of the traveled portion of a street, either public or private, as dedicated by a deed of record. Where the width of a street is not established, the street line shall be considered to be 24 feet from the centerline of the traveled way [of a Class I, II and III Town Highway.]

**STRUCTURES:** For the purposes of these Regulations, “structure” shall mean an assembly of materials for occupancy or use including, but not limited to, a building or mobile home, excluding:

1. Signs, which shall be regulated as provided in Section 3.13

2. Driveways, which shall be regulated as provided in Section 3.02
3. Swimming pools and ponds, which shall be regulated as provided in Section 4.07
4. Walls and fences, which shall be regulated as provided in Section 3.16

**STRUCTURE** (For Section 5.09 Special Flood Hazard Area): means, a walled and roofed building, manufactured home, as well as a gas or liquid storage tank.

**SUBSTANTIALLY COMPLETED:** The completion of a permitted building or structure to the extent that it may be safely occupied or used.

**SUBSTANTIAL DAMAGE** (For Section 5.09 Special Flood Hazard Area): means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENTS** (For Section 5.09 Special Flood Hazard Area): means any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of these regulations, the cost of which, over three years, or over a the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

**TELECOMMUNICATIONS FACILITY:** See Definitions in Section 4.08(c). A support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county, state or other governmental purposes, and associated ancillary facilities that provide access and/or house equipment.

**YARD:** Space on a lot not occupied with a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.

**VIOLATION** (For Section 5.09 Special Flood Hazard Area): means the failure of a structure or other development to be fully compliant with these regulations. A completed structure or other final development project without the elevation certificate, other required certifications, or other evidence of compliance required in 44 CFR within 60.3, is presumed to be in violation until such time as that documentation is provided.